

5. Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punishable with transportation for a term which may extend to fourteen years, to which fine may be added, or with imprisonment for a term which may extend to five years, to which fine may be added.

6. Any person who by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any offence under this Act shall be punished with the punishment provided for the offence.

7. No Court shall proceed to the trial of any person for an offence against this Act except with the consent of the Local Government or the Governor General in Council.

Restriction on trial of offences.

Statement of Objects and Reasons.

Recent events have brought prominently to notice the inadequacy of the existing law to deal with crimes committed by means of explosive substances. The Indian Explosives Act, 1884, was framed to prevent accidents rather than to prevent crime and its provisions are clearly inadequate to meet the present emergency. No sentence of imprisonment can be imposed under that Act and the maximum penalty is only a fine of three thousand rupees. The Indian Arms Act, 1878, though it applies to the possession of explosives as well as arms, is also inadequate in respect both of the penalties it allows and the scope of its provisions for dealing promptly with preparations to manufacture bombs and other explosives. The Penal Code provides for the punishment of persons who cause hurt or mischief by means of explosive substances and it also deals with attempts to cause hurt or mischief but only when any act towards the commission of the offence is actually done. But it does not provide any penalty for making or possessing explosive substances with unlawful intent and it does not in other cases always provide such severe penalties as are requisite. The Governor-General in Council therefore considers it necessary to supplement the existing law by an Act on the lines of the English Explosive Substances Act, 1883, which was enacted for the express purpose of dealing with anarchist crimes. The Bill which has been drafted to give effect to this decision provides for the punishment of any person who causes an explosion likely to endanger life or property, or who attempts to cause such an explosion, or makes or has in his possession any explosive substance with intent to endanger life or property. It further makes the manufacture or possession of explosive substances for any other than a lawful object a substantive offence and throws on the person who makes or is in possession of any explosive substance the onus of proving that the making or possession was lawful. It also provides adequately for the punishment both of principals and accessories.

H. ADAMSON.

The 6th June 1908.

J. M. MACPHERSON,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Governor General of India in Council received the assent of the Governor General on the 8th June, 1908, and is hereby promulgated for general information:

ACT NO. VII OF 1908.

An Act for the prevention of incitements to murder and to other offences in newspapers.

WHEREAS it is expedient to make better provision for the prevention of incitements to murder and to other offences in newspapers; It is hereby enacted as follows:

Short title and extent. (1) This Act may be called the Newspapers (Incitements to offences) Act, 1908.

(2) It extends to the whole of British India.

Definitions. (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) "Magistrate" means a District Magistrate or Chief Presidency Magistrate:

(b) "newspaper" means any periodical work containing public news or comments on public news:

(c) "printing press" includes all engines, machinery, types, lithographic stones, implements, utensils and other plant or materials used for the purpose of printing.

(2) Save as herein otherwise provided all words and expressions in this Act shall have the same meanings as those respectively assigned to them in the Code of Criminal Procedure, 1898.

Power to forfeit printing presses in certain cases. (1) In cases where, upon application made by order of or under authority from the Local Government, a Magistrate is of opinion that a newspaper printed and published within the Province contains any incitement to murder or to any offence under the Explosive Substances Act, 1908, or to any act of violence, such Magistrate may make a conditional order declaring the printing press used, or intended to be used, for the purpose of printing or publishing such newspaper, or found

in or upon the premises where such newspaper is, or at the time of the printing of the matter complained of was, printed and all copies of such newspaper, wherever found, to be forfeited to His Majesty, and shall in such order state the material facts and call on all persons concerned to appear before him, at a time and place to be fixed by the order, to show cause why the order should not be made absolute.

(2) A copy of such order shall be fixed on some conspicuous part of the premises specified in the declaration made in respect of such newspaper under section 5 of the Press and Registration of Books Act, 1867, or of any other premises in which such newspaper is printed, and the affixing of such copy shall be deemed to be due service of the said order on all persons concerned.

(3) In cases of emergency or in cases where the purposes of the application might be defeated by delay, the Magistrate may, on or after the making of a conditional order under sub-section (1), make a further order *ex parte* for the attachment of the printing press or other property referred to in the conditional order.

(4) If any person concerned appears and shows cause against the conditional order, the Magistrate shall take evidence, whether in support of or in opposition to such order, in manner provided in section 356 of the Code of Criminal Procedure, 1898.

(5) If the Magistrate is satisfied that the newspaper contains matter of the nature specified in sub-section (1), he shall make the conditional order of forfeiture absolute in respect of such property as he may find to be within the terms of the said sub-section.

(6) If the Magistrate is not so satisfied, he shall set aside the conditional order of forfeiture and the order of attachment, if any.

Power to seize. (1) The Magistrate may by warrant empower any Police-officer not below the rank of a Sub-Inspector to seize and detain any property ordered to be attached under section 3, sub-section (3), or to seize and carry away any property ordered to be forfeited under section 3, sub-section (5), wherever found and to enter upon and search for such property in any premises—

(a) where the newspaper specified in such warrant is printed or published, or

(b) where any such property may be or may be reasonably suspected to be, or
 (c) where any copy of such newspaper is kept for sale, distribution, publication or public exhibition or reasonably suspected to be so kept.

(2) Every warrant issued under sub-section (1) so far as it relates to a search shall be executed in manner provided for the execution of search warrants by the Code of Criminal Procedure, 1898.

5. Any person concerned who has appeared and shown cause against a conditional order of forfeiture may appeal to the High Court within fifteen days from the date when such order is made absolute.

6. Save as provided in section 5, no order duly made by a Magistrate under section 3 shall be called in question in any Court.

7. Where an order of forfeiture has been made absolute in relation to any newspaper the Local Government may, by notification in the local official Gazette, annul any declaration made by the printer or publisher of such newspaper under the Press and Registration of Books Act, 1867, and may by such notification prohibit any further declaration being made or subscribed under the said Act in respect of the said newspaper, or of any newspaper which is the same in substance as the said newspaper, until such prohibition be withdrawn.

8. Any person who prints or publishes any newspaper specified in any section 7 during the continuance of that prohibition notified under section 7 during the continuance of that prohibition shall be liable, on conviction, to the penalties prescribed by section 15 of the Press and Registration of Books Act, 1867.

9. All proceedings under this Act shall be conducted so far as may be in accordance with the provisions of the Code of Criminal Procedure, 1898.

10. No proceedings taken under this Act shall operate to prevent any person from being prosecuted for any act which constitutes an offence under any other law.

Statement of Objects and Reasons.

The circumstances of the recent outrages by means of explosive substances have disclosed a close connexion between the perpetrators of such outrages and certain newspapers which have from time to time published criminal incitements. Experience has shown that prosecution under the existing law is inadequate to prevent the publication of these incitements. In the case of one newspaper, persons registered as printer and publisher have been within a comparatively short period prosecuted and convicted several times, while the real authors of the incitements have concealed their identity. This newspaper notwithstanding these prosecutions continues to exist and to pursue its criminal course. Nor is it a solitary instance of the kind.

It has therefore become necessary to make better provision for the prevention of such incitements in newspapers. The scope of the present Bill is confined to incitements to murder, to offences under the Explosive Substances Act, 1908, and to acts of violence. It gives power in such cases to confiscate the printing press used in the production of the newspaper, and to stop the lawful issue of the newspaper.

The procedure adopted in the Bill follows the general lines of that provided in the Code of Criminal Procedure for dealing with public nuisances, with the important addition that the final order of the Magistrate directing the forfeiture of the press is appealable to the High Court within fifteen days. It is further provided that no action can be taken against a press save on the application of a Local Government.

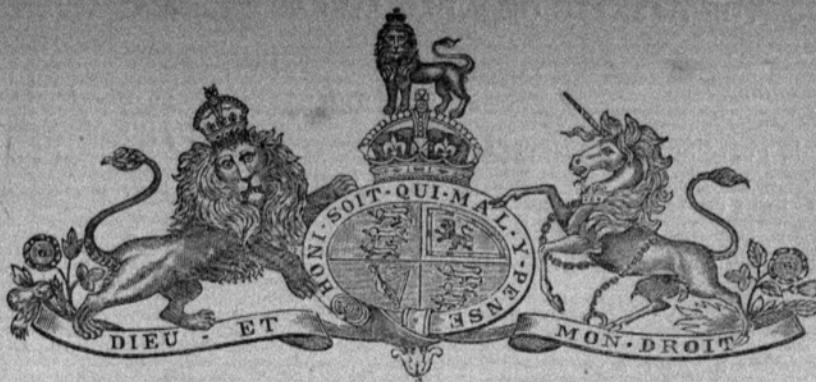
When an order of forfeiture has been made by the Magistrate, but only in that case, the Local Government is empowered to annul the declaration made by the printer and publisher of the newspaper under the Press and Registration of Books Act, 1867, and thereafter neither that newspaper nor any other which is the same in substance can be published without a breach of the law.

It is also provided that no proceedings taken under the Bill shall bar the prosecution of any person for any act which constitutes an offence under any other law.

H. ADAMSON.

The 6th June 1908.

J. M. MACPHERSON,
Secretary to the Government of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 4, 1908.

~~Separate paging is given to this Part in order that it may be filed as a separate compilation.~~

PART V.

Bills introduced in the Council of the Governor General of India for making Laws and Regulations, Reports of Select Committees presented to the Council, and Bills published under Rule 23.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 3rd January, 1908:—

NO. I OF 1908.

THE INDIAN LIMITATION BILL.

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The Indian Limitation Bill.

(*Part I.—Preliminary.—Sects. 1-2.—Part II.—Limitation of Suits, Appeals and Applications.—Sects. 3-5.*)

The bracketed marginal references relate to sections of the Indian Limitation Act, 1877.

A Bill to consolidate and amend the law for the Limitation of Suits, and for other purposes.

WHEREAS it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts; and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

[S. 1.] 1. (1) This Act may be called the Indian Short title extent Limitation Act, 190 . and commencement.

(2) It extends to the whole of British India; and

(3) This section and section 33 shall come into force at once. The rest of this Act shall come into force on the first day of January, 1909.*

[S. 3.] 2. In this Act, unless there is anything repugnant in the subject or Definitions. context,—

(1) "bill of exchange" includes also a hundi and a cheque:

(2) "bond" includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be:

(3) "easement" includes also a right, not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing in, or attached to, or subsisting upon, the land of another:

(4) "foreign country" means any country other than British India:

(5) "good faith" nothing shall be deemed to be done in good faith which is not done with due care and attention:

(6) "moveable property" includes growing crops:

(7) "plaintiff" includes also any person from or through whom a plaintiff derives his right to sue; "applicant" includes also any person from or through whom an applicant derives his right to apply; and "defendant"

* This is the date proposed for the commencement of the new Civil Procedure Code Bill.

includes also any person from or through whom a defendant derives his liability to be sued:

(8) "promissory note" means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight:

(9) "suit" does not include an appeal or an application:

(10) "trustee" does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title.

PART II.

LIMITATION OF SUITS, APPEALS AND APPLICATIONS.

[S. 4.] 3. Subject to the provisions contained in sections 4 to 27 (inclusive), Dismissal of suits, etc., instituted, etc., every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence.

Explanation.—A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is made; and, in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

Illustrations.

(a) A suit is instituted after the prescribed period of limitation. Limitation is not set up as a defence and judgment is given for the plaintiff. The defendant appeals. The Appellate Court shall dismiss the suit.

(b) An appeal presented after the prescribed period is admitted and registered. The appeal shall be dismissed.

4. Where the period of limitation prescribed [S. 5, para. 1.] for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens.

5. Any appeal or application for a review of [S. 5, para. 2.] judgment or any other application to which this section may be made applicable by the Code of Civil Procedure may be admitted after the period of limitation

*The Indian Limitation Bill.**(Part II.—Limitation of Suits, Appeals and Applications.—Sects. 6-11.)*

Prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

[S. 5A.]

6. Wherever it is shown to the satisfaction of the Court that an appeal or an application for a review of certain appeals or applications for judgment was presented after the expiration of the period of limitation prescribed for such appeal or application owing to the appellant or applicant having been misled by any order, or practice, or judgment of the High Court of the Presidency, Province or District, such appeal or application, if otherwise in accordance with law, shall for all purposes be deemed by all Courts to have been presented within the period of limitation prescribed therefor.

[S. 7.]

7. (1) Where a person entitled to institute a suit or make an application Legal disability. is, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the first schedule.

(2) Where such person is, at the time from which the period of limitation is to be reckoned, affected by Double and successive disabilities. two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

(3) Where the disability continues up to the death of such person, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

(4) Where such representative is at the date of the death affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.

Illustrations.

(a) The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accrue. He may institute his suit at any time within three years from the date of his attaining majority.

(b) A, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accrue. A has, under the ordinary law, only one year remaining within which to sue. But under this section and section 9 an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

(c) A right to sue accrues to Z during his minority. After the accrue, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.

(d) A right to sue accrues to X during his minority. X dies before attaining majority, and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

(e) A right to sue for an hereditary office accrues to A who at the time is insane. Six years after the accrue A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under this section read with section 9.

(f) A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accrue, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. This section read with section 9 does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

8. Where one of several joint-creditors or Disability of one claimants or one of several joint creditor. persons jointly entitled to make an application is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all: but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others.

[S. 8.]

Illustrations.

(a) A incurs a debt to a firm of which B, C and D are partners. B is insane, and C is a minor. D can give a discharge of the debt without the concurrence of B and C. Time runs against B, C and D.

(b) A incurs a debt to a firm of which E, F and G are partners. E and F are insane, and G is a minor. Time will not run against any of them until either E or F becomes sane, or G attains majority.

9. Nothing in section 7 or in section 8 applies [S. 7, last para.] to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

10. Where once time has begun to run, no Continuous run. subsequent disability or inability to sue stops it:

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

II. Notwithstanding anything hereinbefore contained, no suit against a press trustees and person in whom property has their representatives. become vested in trust for any specific purpose, or against his legal representa-

[S. 9.]

[S. 10.]

The Indian Limitation Bill.

(Part II.—Limitation of Suits, Appeals and Applications.—Sec. 12.—Part III.—Computation of Period of Limitation.—Secs. 13-19.)

tives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.

[S. 11.] 12. (1) Suits instituted in British India on contracts entered into in a foreign country are subject to the rules prescribed by this Act.

(2) No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract and the parties were domiciled in such country during the period prescribed by such rule.

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

[S. 12.] 13. (1) In computing the period of limitation prescribed for any suit, on which right to appeal or application, the day sue accrues, from which such period is to be reckoned shall be excluded.

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal as a pauper, and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded.

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

(4) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

[S. 13.] 14. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India shall be excluded.

[S. 14.] 15. (1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the

defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation like exclusion in prescribed for any application, the time during which the applicant has been making another application for the same relief shall be excluded, where the last-mentioned application is made in good faith to a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to grant it.

Explanation 1.—In excluding the time during which a former suit or application was pending or being made, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation 2.—A plaintiff resisting an appeal presented on the ground of want of jurisdiction shall be deemed to be prosecuting a suit within the meaning of this section.

16. In computing the period of limitation prescribed for any suit, or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order.

[S. 15.] the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

17. In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which the judgment-debtor has been prosecuting a proceeding to set aside the sale shall be excluded.

18. In computing the period of limitation prescribed for any suit against the Secretary of State for India in Council, or against a public officer in

[New.]

respect of any act purporting to be done by such public officer in his official capacity, where, previous to the institution of the suit, the notice in writing required by the provisions of the Code of Civil Procedure in that behalf has been delivered or left in pursuance of the said provisions, the two months next after the said notice was so delivered or left shall be excluded.

19. (1) Where a person who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall

[S. 16.]

Effect of death before right to sue accrues.

*The Indian Limitation Bill.**(Part III.—Computation of Period of Limitation.—Sects. 20-24.)*

be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

(2) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

(3) Nothing in sub-section (1) applies to suits to enforce rights of pre-emption or to suits for the possession of immoveable property or of an hereditary office.

[S. 18.] 20. Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded, or where any document necessary to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application—

- (a) against the person guilty of the fraud or accessory thereto, or
- (b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

[S. 19.] 21. (1) Where before the expiration of the period prescribed for a suit or application, including an application for the execution of a decree, in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a new period of limitation according to the nature of the original liability, shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but oral evidence of its contents shall not be received.

Explanation 1.—For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for

payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation 2.—In this section "signed" means signed either personally or by an agent duly authorized in this behalf.

22. (1) Where interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf,

or where part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf,

a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment was made:

Provided that, in the case of part payment of the principal of a debt, the fact of the payment appears in the handwriting of the person making the same.

(2) Where mortgaged land is in the possession of the mortgagee, the produce of mortgaged land shall be deemed to be a payment for the purpose of sub-section (1).

Explanation.—Debt includes money payable under a decree of Court.

23. (1) The expression "agent duly authorized in this behalf", in sections 21 and 22, shall, in the case of a person under disability, include his lawful guardian or manager, or an agent duly authorized by such guardian or manager to sign the acknowledgment or make the payment.

(2) Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed, or of a payment made by, or by the agent of, any other or others of them.

24. (1) Where, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted

[S. 20.]

[New.]

[S. 21.]

[S. 22, para. 1.]

[New.]

The Indian Limitation Bill.

(*Part III.—Computation of Period of Limitation.—Sects. 25-27.—Part IV.—Acquisition of Ownership by Possession.—Sects. 28-29.*)

owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

[S. 23.] 25. In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

[S. 24.] 26. In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Illustrations.

(a) A owns the surface of a field. B owns the subsoil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by A against B runs from the time of the subsidence.

(b) A speaks and publishes of B slanderous words not actionable in themselves without special damage caused thereby. C in consequence refuses to employ B as his clerk. The period of limitation in the case of a suit by B against A for compensation for the slander does not commence till the refusal.

[S. 25.] 27. All instruments shall, for the purposes of Computation of time this Act, be deemed to be mentioned in instruments made with reference to the Gregorian calendar.

Illustrations.

(a) A Hindu makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiration of four months after date computed according to the Gregorian calendar.

(b) A Hindu makes a bond, bearing a Native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiration of one year after date computed according to the Gregorian calendar.

PART IV.**ACQUISITION OF OWNERSHIP BY POSSESSION.**

[S. 26.] 28. (1) Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, and as of right, without interruption, and for twenty years, and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, way, watercourse, use of water, or other easement shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

(2) Where the property over which a right of easement against Government is claimed under sub-section (1) belongs to Government, that sub-section shall be read as if for the words "twenty years" the words "sixty years" were substituted.

Explanation.—Nothing is an interruption within the meaning of this section unless, where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Illustrations.

(a) A suit is brought in 1911 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption from 1st January, 1890, to 1st January, 1910. The plaintiff is entitled to judgment.

(b) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff, on one occasion during the twenty years, had asked his leave to enjoy the right. The suit shall be dismissed.

29. Where any land or water upon or exclusion in favour of reversioner of servient tenement has been enjoyed or derived by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the period of twenty years in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

[S. 27.]

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of these years C, a Hindu widow, had a life interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

The Indian Limitation Bill.

(Part IV.—Acquisition of Ownership by Possession—Sec. 30.—Part V.—Savings and Repeals.—Secs. 31-34.)

[S. 28.]

30. At the determination of the period hereby extinguished of limited to any person for right to property. instituting a suit for possession of any property, his right to such property shall be extinguished.

PART V.**SAVINGS AND REPEALS.**

[S. 1, 2, 6.]

Savings. 31. (1) Nothing in this Act shall—

IX of 1872.

(a) affect the Indian Contract Act, 1872, section 25;

(b) affect or alter any period of limitation specially prescribed for any suit, appeal or application by any special or local law now or hereafter in force in British India.

(2) Nothing contained in sections 2 and 34 or in Parts II and III shall apply—

IV of 1869.

(a) to suits under the Indian Divorce Act, or

(b) to suits under the Madras Hereditary Offices Regulation, 1831.

VI of 1831.

(3) Sections 28 and 29 and the definition of "easement" in section 2 shall not apply to cases arising in territories to which the Indian Easements Act, 1882, may, for the time being, extend.

V of 1882.

32. Notwithstanding anything herein contained, any suit for which the period prescribed is shorter than that prescribed by the Indian Limitation Act, 1877, the Indian Limitation Act, 1877, may be insti-

tuted within the period of two years next after the passing of this Act, or within the period prescribed for such suit by the Indian Limitation Act, 1877, whichever period expires first.

33. (1) Notwithstanding anything herein

Provision for suits contained in the territories by certain mortgagees mentioned in the second in territories mentioned in the second schedule a suit for foreclosure or for sale by a mortgagee, may be instituted within two years from the date of the passing of this Act, or within sixty years from the date when the money secured by the mortgage became due, whichever period expires first; and no such suit in the said territories instituted within the said period of sixty years and pending at the date of the passing of this Act shall be dismissed on the ground of limitation.

[New.]

(2) In the aforesaid territories a suit of the nature mentioned in sub-section (1) which has been dismissed solely on the ground of limitation after the twenty-second day of July 1907, may be restored on an application in writing to the Court which dismissed the suit, provided the application is preferred within ninety days from the date of the passing of this Act: and on such restoration, the provisions of sub-section (1) shall apply to the suit.

34. The enactments mentioned in the third schedule are repealed to the extent specified in the fourth column thereof.

The Indian Limitation Bill.

(The First Schedule.—First Division: Suits.)

The bracketed marginal references are to articles in the second schedule of the Limitation Act, 1877.

THE FIRST SCHEDULE.

(See Section 3.)

FIRST DIVISION: SUITS.

	Description of suit.	Period of limitation.	Time from which period begins to run.
		<i>Part I.— Thirty days.</i>	
[Art. 1.]	1.—To contest an award of the Board of Revenue under the Waste Lands (Claims) Act, 1863.	Thirty days	When notice of the award is delivered to the plaintiff.
[Art. 2.]	2.—For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in British India.	Ninety days	When the act or omission takes place.
[Art. 3.]	3.—Under the Specific Relief Act, 1877, section 9, to recover possession of immoveable property.	Six months	When the dis- possession occurs.
[Art. 4.]	4.—Under the Employers and Workmen (Disputes) Act, 1860, section 1.	Ditto	When the wages, hire or price of work claimed accrue or accrues due.
[Art. 5.]	5.—Under the Code of Civil Procedure when triable summarily.	Ditto	When the debt becomes payable or land recoverable or the breach of trust occurs.
[Art. 6.]	6.—Upon a Statute, Act, Regulation or Bye-law, for a penalty or forfeiture.	One year	When the penalty or forfeiture is incurred.
[Art. 7.]	7.—For the wages of a household servant, artisan or labourer not provided for by this schedule, No. 4.	Ditto	When the wages accrue due.
[Art. 8.]	8.—For the price of food or drink sold by the keeper of a hotel, tavern or lodging-house.	Ditto	When the food or drink is delivered.
[Art. 9.]	9.—For the price of lodging	Ditto	When the price becomes payable.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

	Description of suit.	Period of limitation.	Time from which period begins to run.
		<i>Part IV.— One year —contd.</i>	
	10.—To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract.	One year	When the pur- chasing takes, under the sale sought to be impeached, physical posses- sion of the whole of the property sold, or, where the subject of the sale does not admit of phys- ical possession, when the instru- ment of sale is registered.
	11.—By a person, against whom any of the following orders has been made to establish his right to the property comprised in the order:	Ditto	The date of the order.
	(1) Order under the Code of Civil Procedure on a claim preferred to, or an objection made to the attachment of, property attached in execution of a decree;		
	(2) Order under section 28 of the Presidency Small Cause Courts Act, 1882.		
	11a.—By a person against whom an order has been made under the Code of Civil Procedure, upon an application by the holder of a decree for the possession of immoveable property or by the purchaser of such property sold in execution of a decree, complaining of resis- tance or obstruction to the delivery of possession thereof, or upon an application by any person dis- possessed of such prop- erty in the delivery of possession thereof to the decree-holder or purchaser, to establish his right to the present possession of the property com- prised in the order.	Ditto	The date of the order. [Cf. Art. 11.]

The Indian Limitation Bill.
(*The First Schedule.—First Division: Suits.*)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.		Period of limitation.	Time from which period begins to run.	Description of suit.		Period of limitation.	Time from which period begins to run.
		<i>Part IV.—One year—contd.</i>				<i>Part IV.—One year—contd.</i>	
[Art. 12.]	12.—To set aside any of the following sales:—	One year	When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.	18.—Like suit for compensation when the acquisition is not completed.	One year	The date of the refusal to complete.	[Art. 18.]
	(a) sale in execution of a decree of a Civil Court;			19.—For compensation for false imprisonment.	Ditto	When the imprisonment ends.	[Art. 19.]
	(b) sale in pursuance of a decree or order of a Collector or other officer of revenue;			20.—By executors, administrators or representatives under the Legal Representatives' Suits Act, 1855.	Ditto	The date of the death of the person wronged.	[Art. 20.]
	(c) sale for arrears of Government revenue, or for any demand recoverable as such arrears;			21.—By executors, administrators or representatives under the Indian Fatal Accidents Act, 1855.	Ditto	The date of the death of the person killed.	[Art. 21.] XII of 1855
	(d) sale of a patni taluk sold for current arrears of rent.			22.—For compensation for any other injury to the person.	Ditto	When the injury is committed.	[Art. 22.] XIII of 1855
	<i>Explanation.</i> —In this clause "patni" includes any intermediate tenure saleable for current arrears of rent.			23.—For compensation for a malicious prosecution.	Ditto	When the plaintiff is acquitted, or the prosecution is otherwise terminated.	[Art. 23.]
[Art. 13.]	13.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.	Ditto	The date of the final decision or order in the case by a Court competent to determine it finally.	24.—For compensation for libel.	Ditto	When the libel is published.	[Art. 24.]
[Art. 14.]	14.—To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.	Ditto	The date of the act or order.	25.—For compensation for slander.	Ditto	When the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results.	[Art. 25.]
[Art. 15.]	15.—Against Government to set aside any attachment, lease or transfer of immovable property by the revenue-authorities for arrears of Government revenue.	Ditto	When the attachment, lease or transfer is made.	26.—For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	Ditto	When the loss occurs.	[Art. 26.]
[Art. 16.]	16.—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue-authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	Ditto	When the payment is made.	27.—For compensation for inducing a person to break a contract with the plaintiff.	Ditto	The date of the breach.	[Art. 27.]
[Art. 17.]	17.—Against Government for compensation for land acquired for public purposes.	Ditto	The date of determining the amount of the compensation.	28.—For compensation for an illegal, irregular or excessive distress.	Ditto	The date of the distress.	[Art. 28.]
				29.—For compensation for wrongful seizure of moveable property under legal process.	Ditto	The date of the seizure.	[Art. 29.]
				30.—Against a carrier for compensation for losing or injuring goods.	Ditto	When the loss or injury occurs.	[Art. 30.]

The Indian Limitation Bill.

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
[Art. 31.] 31.—Against a carrier for compensation for non-delivery of, or delay in delivering, goods.	<i>Part IV.—One year—concl.</i> One year	When the goods ought to be delivered.
[Art. 32.] 32.—Against one who, having a right to use property for specific purposes, perverts it to other purposes.	<i>Part V.—Two years.</i> Two years	When the perversion first becomes known to the person injured thereby.
[Art. 33.] 33.—Under the Legal Representatives' Suits Act, 1855, against an executor.	Ditto	When the wrong complained of is done.
[Art. 34.] 34.—Under the same Act against an administrator.	Ditto	Ditto.
[Art. 35.] 35.—Under the same Act against any other representative.	Ditto	Ditto.
[Art. 36.] 36.—For compensation for any malfeasance, misfeasance or non-feasance independent of contract and not herein specially provided for.	Ditto	When the malfeasance, misfeasance or non-feasance takes place.
[Art. 37.] 37.—For compensation for obstructing a way or a watercourse.	<i>Part VI.—Three years.</i> Three years	The date of the obstruction.
[Art. 38.] 38.—For compensation for diverting a watercourse.	Ditto	The date of the diversion.
[Art. 39.] 39.—For compensation for trespass upon immoveable property.	Ditto	The date of the trespass.
[Art. 40.] 40.—For compensation for infringing copyright or any other exclusive privilege.	Ditto	The date of the infringement.
[Art. 41.] 41.—To restrain waste.	Ditto	When the waste begins.
[Art. 42.] 42.—For compensation for injury caused by an injunction wrongfully obtained.	Ditto	When the injunction ceases.
[Art. 43.] 43.—Under the Indian Succession Act, 1865, section 320 or 321, or under the Probate and Administration Act, 1881, section	Ditto	The date of the payment or distribution.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.—Three years—concl.</i>	
139 or 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	Three years	When the ward attains majority. [Art. 44.]
44.—By a ward who has attained majority, to set aside a <i>transfer of property</i> by his guardian.	Ditto	The date of the final award or order in the case. [Art. 45.]
45.—To contest an award under any of the following Regulations of the Bengal Code:—	Ditto	VII of 1822.
The Bengal Land-revenue Settlement Regulation, 1822.		
The Bengal Land-revenue Settlement Regulation, 1825.		IX of 1825.
The Bengal Land-revenue (Settlement and Deputy Collectors) Regulation, 1833.		IX of 1833.
46.—By a party bound by such award to recover any property comprised therein.	Ditto	The date of the final award or order in the case. [Art. 46.]
47.—By any person bound by an order respecting the possession of property made under the Code of Criminal Procedure, 1898, Chapter XII, or the Bombay Mamlatdars' Courts Act, or by any one claiming under such person, to recover the property comprised in such order.	Ditto	The date of the final order in the case. [Art. 47.]
		V of 1898.
		Bom. III of 1876.
48.—For specific moveable property lost, or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same.	Ditto	When the person having the right to the possession of the property first learns in whose possession it is. [Art. 48.]
49.—For other specific moveable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same.	Ditto	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful. [Art. 49.]

The Indian Limitation Bill.

(*The First Schedule. — First Division: Suits.*)

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Three years— contd.</i>	
50.—For the hire of animals, vehicles, boats or household furniture.	Three years.	When the hire becomes payable.
51.—For the balance of money advanced in payment of goods to be delivered.	Ditto	When the goods ought to be delivered.
52.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	Ditto	The date of the delivery of the goods.
53.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Ditto	When the period of credit expires.
54.—For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Ditto	When the period of the proposed bill elapses.
55.—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Ditto	The date of the sale.
56.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Ditto	When the work is done.
57.—For money payable for money lent.	Ditto	When the loan is made.
58.—Like suit when the lender has given a cheque for the money.	Ditto	When the cheque is paid.
59.—For money lent under an agreement that it shall be payable on demand.	Ditto	When the loan is made.
60.—For money deposited under an agreement that it shall be payable on demand, <i>including money of a customer in the hands of his banker so payable.</i>	Ditto	When the demand is made.
61.—For money payable to the plaintiff for money paid for the defendant.	Ditto	When the money is paid.

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI— Three years— contd.</i>	
62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Three years	When the money is received. [Art. 62]
63.—For money payable for interest upon money due from the defendant to the plaintiff.	Ditto	When the interest becomes due. [Art. 63]
64.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Ditto	When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives. [Art. 64]
65.—For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Ditto	When the time specified arrives or the contingency happens. [Art. 65]
66.—On a single bond, where a day is specified for payment.	Ditto	The day so specified. [Art. 66]
67.—On a single bond, where no such day is specified.	Ditto	The date of executing the bond. [Art. 67]
68.—On a bond subject to a condition.	Ditto	When the condition is broken. [Art. 68]
69.—On a bill of exchange or promissory note payable at a fixed time after date.	Ditto	When the bill or note falls due. [Art. 69]
70.—On a bill of exchange payable at sight, or after sight, but not at a fixed time.	Ditto	When the bill is presented. [Art. 70]
71.—On a bill of exchange accepted payable at a particular place.	Ditto	When the bill is presented at that place. [Art. 71]
72.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Ditto	When the fixed time expires. [Art. 72]

The Indian Limitation Bill.

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.	Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.—Three years—contd.</i>			<i>Part VI.—Three years—contd.</i>	
[Art. 73.] 73.—On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Three years	The date of the bill or note.	82.—By a surety against a co-surety.	Three years	When the surety pays anything in excess of his own share. [Art. 82.]
[Art. 74.] 74.—On a promissory note or bond payable by instalments.	Ditto	The expiration of the first term of payment as to the part then payable; and, for the other parts, the expiration of the respective terms of payment.	83.—Upon any other contract to indemnify.	Ditto	When the plaintiff is actually damaged. [Art. 83.]
[Art. 75.] 75.—On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one instalment, the whole shall be due.	Ditto	When the first default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.	84.—By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	Ditto	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance. [Art. 84.]
[Art. 76.] 76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Ditto	The date of the delivery to the payee.	85.—For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	Ditto	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account. [Art. 85.]
[Art. 77.] 77.—On a dishonoured foreign bill, where protest has been made and notice given.	Ditto	When the notice is given.	86.—On a policy of insurance, when the sum assured is payable immediately after proof of the death or loss has been given to or received by the insurers.	Ditto	When proof of the death or loss is given or received to or by the insurers, whether by or from the plaintiff, or any other person. [Art. 86.]
[Art. 78.] 78.—By the payee against the drawer of a bill of exchange, which has been dishonoured by non-acceptance.	Ditto	The date of the refusal to accept.	87.—By the assured to recover premia paid under a policy voidable at the election of the insurers.	Ditto	Where the insurers elect to avoid the policy. [Art. 87.]
[Art. 79.] 79.—By the acceptor of an accommodation-bill against the drawer.	Ditto	When the acceptor pays the amount of the bill.	88.—Against a factor for an account.	Ditto	When the account is, during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates. [Art. 88.]
[Art. 80.] 80.—Suit on a bill of exchange, promissory note or bond not herein expressly provided for.	Ditto	When the bill, note or bond becomes payable.	89.—By a principal against his agent for moveable property received by the latter and not accounted for.	Ditto	Ditto. [Art. 89.]
[Art. 81.] 81.—By a surety against the principal debtor.	Ditto	When the surety pays the creditor.	90.—Other suits by principals against agents for neglect or misconduct.	Ditto	When the neglect or misconduct becomes known to the plaintiff. [Art. 90.]

The Indian Limitation Bill.

(*The First Schedule.—First Division: Suits.*)

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Three years— contd.</i>	
91.—To cancel or set aside an instrument not otherwise provided for.	Three years	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.
92.—To declare the forgery of an instrument issued or registered.	Ditto	When the issue or registration becomes known to the plaintiff.
93.—To declare the forgery of an instrument attempted to be enforced against the plaintiff.	Ditto	The date of the attempt.
94.—For property which the plaintiff has conveyed while insane.	Ditto	When the plaintiff is restored to sanity, and has knowledge of the conveyance.
95.—To set aside a decree obtained by fraud, or for other relief on the ground of fraud.	Ditto	When the fraud becomes known to the party wronged.
96.—For relief on the ground of mistake.	Ditto	When the mistake becomes known to the plaintiff.
97.—For money paid upon an existing consideration which afterwards fails.	Ditto	The date of the failure.
98.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Ditto	The date of the trustee's death or, if the loss has not then resulted, the date of the loss.
99.—For contribution by a party who has paid the whole or more than his share of the amount due under a joint decree, or by a sharer in a joint estate who has paid the whole or more than his share of the amount of revenue due from himself and his co-sharers.	Ditto	The date of the plaintiff's paying in excess of his own share.

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Three years —contd.</i>	
<i>Explanation.—The words "paid" and "paying" include a case where money is realized by the compulsory sale of the plaintiff's property.</i>		
100.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Three years	When the right to contribution accrues. [Art. 100.]
101.—For a seaman's wages	Ditto	The end of the voyage during which the wages are earned. [Art. 101.]
102.—For wages not otherwise expressly provided for by this schedule.	Ditto	When the wages accrue due. [Art. 102.]
103.—By a Muhammadan for exigible dower (<i>mu'ajjal</i>).	Ditto	When the dower is demanded and refused, or (where during the continuance of the marriage, no such demand has been made) when the marriage is dissolved by death or divorce. [Art. 103.]
104.—By a Muhammadan for deferred dower (<i>mu'wajjal</i>).	Ditto	When the marriage is dissolved by death or divorce. [Art. 104.]
105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	Ditto	When the mortgagor re-enters on the mortgaged property. [Art. 105.]
106.—For an account and a share of the profits of a dissolved partnership.	Ditto	The date of the dissolution. [Art. 106.]
107.—By the manager of a joint estate of an undivided family for contribution, in respect of a payment made by him on account of the estate.	Ditto	The date of the payment. [Art. 107.]
108.—By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	Ditto	When the trees are cut down. [Art. 108.]

The Indian Limitation Bill.

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.	Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Three years —contd.</i>			<i>Part VII.— Six years.</i>	
[Art. 109.] 109.—For the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant.	Three years	When the profits are received, or, where the plaintiff has been dispossessed by a decree afterwards set aside on appeal, when he recovers possession.	116.—For compensation for the breach of a contract in writing registered other than suits for arrears of rent.	Six years	When the period [Art. 116.] of limitation would begin to run against a suit brought on a similar contract not registered.
[Art. 110.] 110.—For arrears of rent.	Ditto	When the arrears become due.	117.—Upon a foreign judgment as defined in the Code of Civil Procedure.	Ditto	The date of the [Art. 117.] judgment.
[Art. 111.] 111.—By a vendor of immoveable property for unpaid purchase-money.	Ditto	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.	118.—To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place.	Ditto	When the alleged [Art. 118.] adoption becomes known to the plaintiff, or to some person who is a nearer revolutionary heir to the person to whom the adoption is alleged to have been made than the plaintiff.
[Art. 112.] 112.—For a call by a company registered under any Statute or Act.	Ditto	When the call is payable.	119.—To obtain a declaration that an adoption is valid.	Ditto	When the rights [Art. 119.] of the adopted son, as such, are interfered with.
[Art. 113.] 113.—For specific performance of a contract	Ditto	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.	120.—Suit for which no period of limitation is provided elsewhere in this schedule.	Ditto	When the right [Art. 120.] to sue accrues.
[Art. 114.] 114.—For the rescission of a contract.	Ditto	When the facts entitling the plaintiff to have the contract rescinded first become known to him.		<i>Part VIII.— Twelve years.</i>	
[Art. 115.] 115.—For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.	Ditto	When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.	121.—To avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue, or in a patni taluq or other saleable tenure sold for arrears of rent.	Twelve years.	When the sale [Art. 121.] becomes final and conclusive.
			122.—Upon a judgment obtained in British India or a recognise.	Ditto	The date of the [Art. 122.] judgment or recognisance.
			123.—For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate.	Ditto	When the legacy [Art. 123.] or share becomes payable or deliverable.

The Indian Limitation Bill.
(The First Schedule.—First Division: Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

	Description of suit.	Period of limitation.	Time from which period begins to run.		Description of suit.	Period of limitation.	Time from which period begins to run.
		<i>Part VIII.— Twelve years— contd.</i>				<i>Part VIII.— Twelve years— contd.</i>	
[Art. 124.]	124.—For possession of an hereditary office.	Twelve years.	When the defendant takes possession of the office adversely to the plaintiff. <i>Explanation.</i> —An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.		132.—To enforce payment of money charged upon immoveable property.	Twelve years.	When the money [Art. 132.] sued for becomes due.
[Art. 125.]	125.—Suit during the life of a Hindu or Muhammadan female by a Hindu or Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her re-marriage.	Ditto	The date of the alienation.		133.—To recover moveable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depositary or pawnee for a valuable consideration.	Ditto	The date of the [Art. 133.] purchase.
[Art. 126.]	126.—By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property.	Ditto	When the alienee takes possession of the property.		134.—To recover possession of immoveable property conveyed or bequeathed in trust or mortgaged and afterwards purchased from the trustee or mortgagee for a valuable consideration.	Ditto	Ditto. [Art. 134.]
Art. 127.]	127.—By a person excluded from joint family property, to enforce a right to share therein.	Ditto	When the exclusion becomes known to the plaintiff.		135.—Suit instituted in a Court not established by Royal Charter by a mortgagee for possession of immoveable property mortgaged.	Ditto	When the mortgagee's right to [Art. 135.] possession determines.
[Art. 128.]	128.—By a Hindu for arrears of maintenance.	Ditto	When the arrears are payable.		136.—By a purchaser at a private sale for possession of immoveable property sold when the vendor was out of possession at the date of the sale.	Ditto	When the vendor [Art. 136.] is first entitled to possession.
[Art. 129.]	129.—By a Hindu for a declaration of his right to maintenance.	Ditto	When the right is denied.		137.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.	Ditto	When the judgment-debtor is [Art. 137.] first entitled to possession.
[Art. 130.]	130.—For the resumption or assessment of rent-free land.	Ditto	When the right to resume or assess the land first accrues.				
[Art. 131.]	131.—To establish a periodically recurring right.	Ditto	When the plaintiff is first refused the enjoyment of the right.				

The Indian Limitation Bill.

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*
FIRST DIVISION: SUITS—*contd.*

	Description of suit.	Period of limitation.	Time from which period begins to run.		Description of suit.	Period of limitation.	Time from which period begins to run.
		<i>Part VIII.— Twelve years— contd.</i>				<i>Part IX.— Thirty years— contd.</i>	
[Art. 138.]	138.—By a purchaser of land at a sale in execution of a decree, for possession of the purchased land, when the judgment-debtor was in possession at the date of the sale.	Twelve years	The date of the sale.	146.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged.	Thirty years	When any part [Art. 146.] of the principal or interest was last paid on account of the mortgage-debt.	
[Art. 139.]	139.—By a landlord to recover possession from a tenant.	Ditto	When the tenancy is determined.	146A.—By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.	Ditto	The date of dis- [Art. 146A.] possession or discontinuance.	
[Art. 140.]	140.—By a remainderman, a reversioner (other than a landlord) or a devisee, for possession of immoveable property.	Ditto	When his estate falls into possession.	147.—By a mortgagee for foreclosure or sale.	<i>Part X.— Sixty years.</i>	When the money [Art. 147.] secured by the mortgage becomes due.	
[Art. 141.]	141.—Like suit by a Hindu or Muhammadan entitled to the possession of immoveable property on the death of a Hindu or Muhammadan female.	Ditto	When the female dies.	148.—Against a mortgagee to redeem or to recover possession of immoveable property mortgaged.	Ditto	When the right [Art. 148.] to redeem or to recover possession accrues: Provided that all claims to redeem arising under instruments of mortgage of immoveable property situate in Lower Burma which had been executed before the first day of May, 1863, shall be governed by the rules of limitation in force in that province immediately before the same day.	
[Art. 142.]	142.—For possession of immoveable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Ditto	The date of the dispossession or discontinuance.				
[Art. 143.]	143.—Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	Ditto	When the forfeiture is incurred or the condition is broken.				
[Art. 144.]	144.—For possession of immoveable property or any interest therein not hereby otherwise specially provided for.	Ditto	When the possession of the defendant becomes adverse to the plaintiff.				
		<i>Part IX.— Thirty years.</i>					
[Art. 145.]	145.—Against a depositary or pawnee to recover moveable property deposited or pawned.	Thirty years	The date of the deposit or pawn.	149.—Any suit by or on behalf of the Secretary of State for India in Council.	Ditto	When the period [Art. 149.] of limitation would begin to run under this Act against a like suit by a private person.	

The Indian Limitation Bill..

(The First Schedule.—Second Division : Appeals.)

THE FIRST SCHEDULE—*contd.*

SECOND DIVISION: APPEALS.

	Description of appeal.	Period of limitation.	Time from which period begins to run.
[Art. 150.] V of 1898.	150.—Under the Code of Criminal Procedure, 1898, from a sentence of death passed by a Sessions Judge.	Seven days	The date of the sentence.
[Art. 151.]	151.—From a decree or order of any of the High Courts of Judicature at Fort William, Madras and Bombay or the Chief Court of the Punjab or the Chief Court of Lower Burma in the exercise of its original jurisdiction.	Twenty days	The date of the decree or order.
[Art. 152.]	152.—Under the Code of Civil Procedure to the Court of a District Judge.	Thirty days	The date of the decree or order appealed from.
[Art. 153.]	153.—Under the same Code, to a High Court, from an order of a Subordinate Court refusing to certify that a case fulfils the requirements of section 110 of the Code or that it is otherwise a fit case for appeal to His Majesty in Council.	Ditto	The date of the order refusing the certificate.
[Art. 154.] V of 1898.	154.—Under the Code of Criminal Procedure, 1898, to any Court other than a High Court.	Ditto	The date of the sentence or order appealed from.
[Art. 155.]	155.—Under the same Code, to a High Court, except in the cases provided for by No. 150 and No. 157.	Sixty days	Ditto.
[Art. 156.]	156.—Under the Code of Civil Procedure to a High Court, except in the cases provided for by No. 151 and No. 153.	Ninety days	The date of the decree or order appealed from.
[Art. 157.] V of 1898.	157.—Under the Code of Criminal Procedure, 1898, from a judgment of acquittal.	Six months.	The date of the judgment appealed from.

THE FIRST SCHEDULE—*contd.*

THIRD DIVISION: APPLICATIONS.

	Description of application.	Period of limitation.	Time from which period begins to run.
	158.—Under the Code of Civil Procedure, to set aside an award.	Ten days	When the award [Ar 158.] is submitted to the Court.
	159.—For leave to appear and defend a suit under the Code of Civil Procedure <i>when triable summarily.</i>	Ditto	When the summons is served. [Art. 159.]
	160.—For an order under the same Code, restoring to the file an application for review rejected in consequence of the failure of the applicant to appear when the application was called on for hearing.	Fifteen days	When the application for review is rejected. [Art. 160.]
	161.—For a review of judgment by a Provincial Court of Small Causes, or by a Court invested with the jurisdiction of a Provincial Court of Small Causes when exercising that jurisdiction.	Ditto	The date of the [Art. 160A.] decree or order.
	162.—For a review of judgment by any of the High Courts of Judicature at Fort William, Madras and Bombay or the Chief Court of the Punjab or the Chief Court of Lower Burma in the exercise of its original jurisdiction.	Twenty days	Ditto. [Art. 162.]
	163.—By a plaintiff, for an order to set aside a dismissal by default or on failure to furnish security for costs.	Thirty days	The date of the [Art. 163.] dismissal.
	164.—By a defendant, for an order to set aside a judgment <i>ex parte.</i>	Ditto	The date of executing any process for enforcing the judgment. [Art. 164.]
	165.—Under the Code of Civil Procedure by a person dispossessed of immoveable property, and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	Ditto	The date of the dispossession. [Art. 165.]
	166.—Under the Code of Civil Procedure to set aside a sale in execution of a decree.	Ditto	The date of [Art. 166.] sale.

'The Indian Limitation Bill.
(*The First Schedule.—Third Division : Applications.*)

THE FIRST SCHEDULE—*contd.*THIRD DIVISION: APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
[Art. 167.] 167.—Complaining of resistance or obstruction to delivery of possession of immoveable property decreed or sold in execution of a decree.	Thirty days	The date of the resistance, obstruction or dispossession.
[Art. 168.] 168.—For the readmission of an appeal dismissed for want of prosecution.	Thirty days	The date of the dismissal.
[Art. 169.] 169.—For the re-hearing of an appeal heard <i>ex parte</i> in the absence of the respondent.	Ditto	The date of the decree in appeal.
[Art. 170.] 170.—For leave to appeal as a pauper.	Ditto	The date of the decree appealed from.
[Cf. Art. 171.] 171.—Under the Code of Civil Procedure for an order to set aside the abatement of a suit or an appeal.	Sixty days	The date of the abatement.
[Cf. Art. 171.] 172.—Under the Code of Civil Procedure by the assignee or the receiver of an insolvent plaintiff or appellant for an order to set aside the dismissal of a suit or an appeal.	Ditto	The date of the order of dismissal.
[Art. 173.] 173.—For a review of judgment except in the cases provided for by No. 161 and No. 162.	Ninety days	The date of the decree or order.
[Art. 173A.] 174.—For the issue of a notice under the same Code, to show cause why any payment made out of Court of any money payable under a decree or any adjustment of the decree should not be recorded as certified.	Ditto	When the payment or adjustment is made.
[Art. 175.] 175.—For payment of the amount of a decree by instalments.	Six months	The date of the decree.
Art. 175A.] 176.—Under the Code of Civil Procedure to have the legal representative of a deceased plaintiff or of a deceased appellant made a party.	Ditto	The date of the death of the deceased plaintiff or appellant.

THE FIRST SCHEDULE—*contd.*THIRD DIVISION: APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
177.—Under the Code of Civil Procedure to have the legal representative of a deceased defendant or of a deceased respondent made a party.	Six months	The date of the death of the deceased defendant or respondent.
178.—Under the Code of Civil Procedure, for the filing in Court of an award in a suit made in any matter referred to arbitration by order of the Court, or of an award made in any matter referred to arbitration without the intervention of a Court.	Six months	The date of the award.
179.—By a person desiring to appeal under the Code of Civil Procedure to His Majesty in Council for a certificate under the Code.	Ditto	The date of the decree appealed against.
180.—Applications for which no period of limitation is provided elsewhere in this schedule or by the Code of Civil Procedure.	Three years	When the right to apply accrues.
181.—For the execution of a decree or order of any Civil Court not provided for by No. 182 or by the Code of Civil Procedure.	Three years or, where a certified copy of the decree or order has been registered, six years.	1. The date of the decree or order, or 2. (where there has been an appeal) the date of the final decree or order of the Appellate Court, or the withdrawal of the appeal, or 3. (where there has been a review of judgment) the date of the decision passed on the review, or 4. (where the decree has been amended) the date of amendment, or

The Indian Limitation Bill.

(The First Schedule.—Third Division : Applications.)

THE FIRST SCHEDULE—*contd.*THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
181. For the execution of a decree or order of any Civil Court not provided for by No. 182 or by the Code of Civil Procedure— <i>contd.</i>	Three years ; or, where a certified copy of the decree or order has been registered, six years.	5. (where the application next hereinafter mentioned has been made) the date of applying in accordance with law to the proper Court for execution, or to take some step in aid of execution, of the decree or order, or 6. (where the notice next hereinafter mentioned has been issued) the date of <i>actual issue of notice to the person against whom execution is applied for to show cause why the decree should not be executed against him</i> , when the issue of such a notice is required by the Code of Civil Procedure or 7. (where the application is to enforce any payment which the decree or order directs to be made at a certain date), such date. <i>Explanation I.</i> —Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 5 of this No. shall take effect in favour only of such of the said persons or their representatives as it may be made by. But where the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all.

THE FIRST SCHEDULE—*concl.*THIRD DIVISION : APPLICATIONS—*concl.*

Description of application.	Period of limitation.	Time from which period begins to run.
181. For the execution of a decree or order of any Civil Court not provided for by No. 182 or by the Code of Civil Procedure— <i>contd.</i>	Three years ; or, where a certified copy of the decree or order has been registered, six years.	Where the decree or order has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But, where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them, or against his or their representatives, shall take effect against them all. <i>Explanation II.</i> —“Proper Court” means the Court whose duty it is to execute the decree or order.
182.—To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of His Majesty in Council.	Twelve years.	When a present [Art. 180.] right to enforce the judgment, decree or order accrues to some person capable of releasing the right; Provided that when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment, or the latest of such revivors, payments or acknowledgments as the case may

The Indian Limitation Bill.
(The Second Schedule. The Third Schedule—Enactments repealed.)

THE SECOND SCHEDULE.

(See section 33.)

The Presidency of Fort St. George.
 The Presidency of Bombay.
 The Sambalpur District of the Bengal Division of the Presidency of Fort William.
 The United Provinces of Agra and Oudh.
 Burma.
 The Central Provinces.
 Ajmer-Merwara.

THE THIRD SCHEDULE.

ENACTMENTS REPEALED.

(See section 34)

Year.	No.	Short title.	Extent of Repeal.
1877	XV	The Indian Limitation Act, 1877.	The whole.
1877	XVII	The Punjab Courts Act, 1877.	So much as has not been repealed.
1879	XII	The Registration and Limitation Acts Amendment Act, 1879.	In the title the words "and the Limitation Act, 1877" and after section 107, from the words "And whereas" to the end of the Act.
1881	V	The Probate and Administration Act, 1881.	Section 156.

THE THIRD SCHEDULE—*contd.*ENACTMENTS REPEALED—*contd.*(See section 34)—*contd.*

Year.	No.	Short title.	Extent of Repeal.
1887	IX	The Provincial Small Cause Courts Act, 1887.	Section 36.
1888	VII	The Civil Procedure Code Amendment Act, 1888.	In the title and in the preamble, the words "and the Indian Limitation Act, 1877" and of section 66 so much as has not been repealed.
1892	VI	The Indian Limitation Act and Civil Procedure Code Amendment Act, 1892.	In the title and in the preamble, the words "the Indian Limitation Act, 1877, and" and section I.
1899	X	The Carriers Act, 1899.	Section 3.
1900	VI	The Lower Burma Courts Act, 1900.	So much of section 47 and the first schedule as relates to the Indian Limitation Act, 1877.
1900	IV	The Indian Limitation Amendment Act, 1900.	The whole.
1906	IV	The Presidency Small Cause Courts Act, 1906.	Section 5.
1907	III	The Provincial Insolvency Act, 1907.	So much of section 56 and the schedule as relates to the Indian Limitation Act, 1877.

J. M. MACPHERSON,
 Secretary to the Government of India.

STATEMENT OF OBJECTS AND REASONS.

1. One immediate circumstance which has moved the Government of India to undertake legislation in connection with the Indian Limitation Act, 1877, is the hardship which has been caused to the holders of mortgages of immoveable property, in forms other than what is known as the English form, over a large part of India, by reason of the recent decision of the Judicial Committee of the Privy Council in the case of *Vasudeva v. Srinivasa* (11 C. W. N. 1005). In that case their Lordships, over-ruling the decisions of the High Courts of Bombay, Madras and Allahabad, have advised that the period of limitation prescribed by the Indian Limitation Act, 1877, for suits to enforce payment of money secured by such mortgages, is twelve years as provided in article 132 of the Second Schedule of that Act, and not the longer period of sixty years prescribed by article 147. In the opinion of the Privy Council the latter article applies only to the class of mortgages in which a suit may be brought for "foreclosure or sale," that is, only to English mortgages. Previous to this decision for nearly a quarter of a century, the law had been held by the High Courts of Bombay and of Allahabad to be that every suit by a mortgagee either for foreclosure or for sale was governed by the sixty years' rule of limitation enacted in article 147, and the same view of the law had been accepted by the High Court of Madras and by some other High Courts. The effect of the decision of the Privy Council has been that in the territories within the jurisdiction of the above High Courts a number of suits for the enforcement of mortgages, which, before the decision of the Privy Council, would have been within time, have been and must be dismissed by the Courts on the ground that they are barred by limitation, and that the claims under a still larger number of mortgages have become unenforceable owing to the construction thus put on the Statute of Limitation. This result is undoubtedly hard on mortgagees who have relied on the view of the law taken by the High Courts of their Provinces and now find themselves debarred of all remedy because that view has been decided to be incorrect. The Government of India are of opinion that some provision should be made to meet these cases, and it is accordingly proposed in the Bill to allow to these mortgagees a period of two years within which to bring their suits, provided that the whole period from the date when the money secured by the mortgage became due does not exceed sixty years in all. Provision is also made for the continuance of pending suits and for the restoration of suits which have been dismissed on the ground of limitation since the date of the Privy Council decision.

2. Legislation is also necessary to give effect to the recommendations of the Committee on the Code of Civil Procedure. These have been incorporated in the present Bill.

3. It seems desirable also to take this opportunity of settling at rest some doubts on other provisions of the Limitation Act which have been caused by conflicting decisions of the different High Courts. These relate for the most part to matters of detail rather than to questions of principle, and a sufficient account of the amendments proposed in respect of them will be found in the *Notes on Clauses* annexed to this Statement.

4. It would be possible to enact the proposed alterations by an amending Act. But the Limitation Act of 1877 has been already amended by no less than eleven different enactments. It is clearly desirable to have the whole of the statutory law on the subject dealt with in one Act and to clear the Statute-book of these scattered enactments. It is proposed for this reason to introduce an amending and consolidating Bill, embodying the alterations to which attention has been called, re-enacting the present Act in other respects and repealing the various Acts and provisions in which the law is now contained.

H. ERLE RICHARDS.

The 2nd January, 1908.

Notes on Clauses.

The sections and schedules of the Act have been rearranged, the saving and repealing provisions being placed at the end.

In the Act various suits, appeals and applications are described by reference to the number of the particular section of any Act under which the suit, appeal or application in question may be instituted, preferred or made. Most of these references are to sections of the Code of Civil Procedure, and as the majority of these sections have, in the Civil Procedure Code Bill now before the Legislature, been relegated to Rules which may from time to time be altered and may be different in different Provinces, it has been considered advisable in framing the clauses and articles in the Bill to avoid these references and to render the provisions of the Bill self-contained as far as possible.

CLAUSES OF BILL.

Clause 1.—It is proposed that section 33, which provides for suits on mortgages ^{Section 1.} affected by the Privy Council case, should take effect on the passing of the Bill, and that the rest of the Act should come into force simultaneously with the Code of Civil Procedure now before the Legislature.

Clause 2.—The definitions have been rearranged in alphabetical order.

No. (6) has been added to make the term "moveable property" include growing ^{Section 3.} crops in accordance with the amendment proposed in the Civil Procedure Code Bill. This is for consideration. It was approved by the Select Committee on the Code of Civil Procedure of 1903 and was inserted in their Draft Bill (Schedule IV.).

Clause 5.—Words have been inserted in this clause to include applications to which ^{Section 5, para. 2.} the clause may be made applicable by the Code of Civil Procedure. This amendment has the approval of the Special Committee on the Code of Civil Procedure of 1907.

Clauses 7 and 8.—The last clause of section 7 with some verbal modifications ^{Sections 7, 8.} has been placed as a separate clause after clause 8 so as to make it clear that its provisions are applicable to cases governed by either of the clauses 7 or 8.

Cases of a person entitled to institute a suit or make an application being under any legal disability are dealt with by sections 7 and 8 of the Act.

It has been held in a series of decisions of the Madras High Court that section 7 applies only to cases where the right to bring a suit or to make an application is vested either—

- (i) in a single individual who is under a disability, or
- (ii) in a number of individuals, all of whom are under a disability.

These cases are: *Seshan v. Rajagopala*, I. L. R. 13 Mad. 236, where there was a decree in favour of three persons of whom two only were minors, and it was held that section 7 did not apply to an application for the execution of the decree: *Vigneswara v. Bapayya*, I. L. R. 16 Mad. 436, and *Moidin v. Beevi*, I. L. R. 18 Mad. 38, which were cases of suits where some only of several persons entitled to institute them were under disability, and it was held, following the case in I. L. R. 13 Mad. 236, that the suits were not governed by section 7; *Ahinsa v. Abdul*, I. L. R. 25 Mad. 26, where Benson and Bhashyam Ayyangar, JJ., adopted the same construction of section 7 and held that, apart from section 8, the protection afforded by section 7 would extend only to cases where each and all of the persons jointly entitled to sue were affected by disability at the time from which the period of limitation was to be reckoned, and that if any one of them was then free from disability, section 7 cannot be availed of by all or any of them; and *Periasami v. Krishna*, I. L. R. 25 Mad. 431, where a Full Bench of the Madras High Court upheld the same view.

On the construction put upon section 7 by the Madras High Court, cases in which the right is vested jointly in a number of persons of whom some only are under any disability must be left to be governed by section 8 alone, and under the latter part of that section, if there is no one among these persons who can give a discharge without the concurrence of those who are under disability, time would commence to run only from the date when the last of them becomes free from disability and then, apparently, they would have in every case the full period prescribed for the suit or application in question, there being nothing in section 8, corresponding to the last clause of section 7, to limit the period to three years from the cessation of disability or to exclude suits for pre-emption from its scope.

Clause 8.—There is conflict between the Calcutta, Bombay and Allahabad High Courts on the one hand and the Madras High Court on the other on the question, whether an application for the execution of a decree can be saved from limitation by the fact of some only of the decree-holders being under a disability. In *Anundo v. Anundo*, I.L.R. 14 Cal. 50; *Surjo v. Arun*, I. L.R. 28 Cal. 465; *Govind v. Tatta*, I. L.R. 20 Bom. 383, and *Zamir v. Sunder*, I. L.R. 22 All. 199, it has been held that a disability of some only of several joint decree-holders would save an application for the execution of the decree from being barred; while the Madras High Court, in *Seshan v. Rajagopala*, I. L.R. 13 Mad. 230, and in *Periasami v. Krishna*, I. L.R. 25 Mad. 431 F.B., has held the contrary. The High Courts of Calcutta, Bombay and Allahabad hold that the case comes under section 7, but the Madras High Court holds that it comes neither under section 7 nor under section 8. If the right view of section 7 is that it deals only with cases where the person, or all the

persons if there are more than one, entitled to bring a suit or make an application, is or are under disability, the case in question should properly be dealt with by section 8; all the High Courts are agreed that one of several joint decree-holders cannot give a valid discharge without the concurrence of the others; but the Madras High Court in the Full Bench case mentioned in that section while they are in section 7. In the course of his judgment in the case Bhashyam Ayyangar, J., observed that the addition of the words suggested in this amendment would bring the case in question within the operation of section 8 (I. L. R. 25 Mad. 431, at p. 442).

Clause 9.—This is the last paragraph of section 7.

Clause 11.—The proposed amendment is intended to remove certain doubts.

It has been held in some cases that this section does not include a suit for an account of the trust property.

In *Saroda v. Brojo*, I. L. R. 5 Cal. 910, property had been vested in the defendant upon trust to manage it and maintain the plaintiff out of the profits during his minority and to make it over to the plaintiff on his attaining the age of majority; the suit was for a decree directing the defendant to account for all such property, and the profits, receipts and disbursements connected therewith. It was held by White and Maclean, JJ., that the object of the suit not being to recover any property in specie, section 10 did not apply. A similar view was adopted in *Advocate General v. Bai Punjabai*, I. L. R. 18 Bom. 551 (at pp. 566, 567), where the claim was against a trustee for an account of income and disbursements in respect of trust-property and for the balance if any. In *Hurro v. Tarini*, I. L. R. 8 Cal. 766, however, Wilson, J., directed an account and in a manner doubted the correctness of the rule laid down in I. L. R. 5 Cal. 910, and in *Nistarini v. Nandlal*, I. L. R. 30 Cal. 369 (at p. 384), a trustee was directed to render accounts irrespective of any question of limitation. In *Ranga v. Baba*, I. L. R. 20 Mad. 398, the question whether section 10 applied to a suit charging breaches of trust and claiming an account was regarded as a somewhat doubtful question and was left open.

Section 8, clause 1, of the Trustee Act, 1888 (51 & 52 Vict., c. 59), saves from the bar of limitation a claim against a trustee "to recover trust-property, or the proceeds thereof still retained by the trustee, or previously received by him and converted to his use." It has been held that actions against express trustees claiming an account of such property cannot be barred by the Statute of Limitations: *Roche Foucault v. Boustead* (1897), 1 Ch. 196, at p. 208; *North America Co. v. Watkins* (1904), 1 Ch. 242.

Clause 15.—This is section 14 of the Act. The second paragraph of this section is omitted as it is proposed in the Civil Procedure Code Bill to leave out the provision relating to staying proceedings contained in section 20 of the present Code of Civil Procedure.

Clause 16.—Words are proposed to be inserted in the clause so as to make its provisions applicable to cases where the execution of a decree has been stayed by injunction or order.

This section is not applicable to cases of applications for execution of decrees: *Rungiah v. Nanjappa*, I. L. R. 26 Mad. 780, 782, although in *Beni v. Surja*, I. L. R. 26 All. 140, the High Court of Allahabad in computing the period of limitation for an application for execution of a decree allowed the period, during which an injunction staying the execution was in force, to be excluded; it is not, however, clear upon the judgment under what provision of the Act this exclusion was allowed.

The Courts have in many cases where the execution of a decree has been stayed by an injunction or order relieved the decree-holder from the bar of limitation by treating the application made after the withdrawal of the injunction or order as an application to revive or continue some previous application; *Kalyanohai v. Ghansham*, I. L. R. 5 Bom. 29, p. 34 *et seq.*; *Narayan v. Sono*, I. L. R. 24 Bom. 345; *Issur v. Abdul*, I. L. R. 4 Cal. 415; *Huronanath v. Chuni*, I. L. R. 4 Cal. 877; *Ashraf v. Bepin*, I. L. R. 30 Cal. 407, at pp. 411, 413; *Gurudeo v. Amrit*, I. L. R. 33 Cal. 689; *Lakhmi v. Ballam*, I. L. R. 17 All. 425, and *Qamaruddin v. Jawahir*, I. L. R. 27 All. 334 P. C., may be cited as instances.

But it is not always possible by this method to relieve an applicant for execution, in cases where execution has been stayed by reason of an order of Court, from the bar of limitation; as for instance in cases where there was no pending application for execution at the date of the injunction or order (*Sarup v. Watson*, 6 C. W. N. 735); or where the previous application had been dismissed after the removal of the bar but before the date of the fresh application (*Dukhiram v. Jogendra*, 5 C. W. N. 347).

In the course of their judgment in *Rungiah v. Nanjappa*, I. L. R., 26 Mad. 780, Benson and Bhashyam Ayyangar, JJ., observed as follows: "it is only reasonable and proper that in computing the period of limitation prescribed for an application for execution of a decree, the time during which the attaching decree-holder prosecutes a suit under section 283, or during which execution of the decree or a portion of it has been stayed by injunction or otherwise, should be excluded" (at p. 783).

Clause 18.—The addition of this clause was recommended in the Civil Procedure Bill of 1903. In their report the Select Committee observed as follows:

"In proposing an additional section (16A) we have acted on the view that the purpose of clause 424 (section 424 of the Code of Civil Procedure) is to give notice and facilitate

compromise, but not to shorten the period of limitation. Where, for example, the period of limitation is only thirty days, the deduction of two months on account of notice negatives the right of suit."

Clause 21.—There is a conflict between the Madras High Court and the other High Courts on the question whether the provisions of section 19 apply to applications for execution of decrees; the Madras High Court has answered the question in the negative; *Rama v. Venkata*, I. L. R. 5 Mad. 171 F. B.; *Sreenivasa v. Bonuswamy*, I. L. R. 28 Mad. 40; and the other High Courts have answered it in the affirmative: *Trimba v. Kashinath*, I. L. R. 22 Bom. 722, 727; *Venkatrao v. Bijesing*, I. L. R. 10 Bom. 108; *Ram v. Jakur*, I. L. R. 8 Cal. 716; *Toree v. Mahomed*, I. L. R. 9 Cal. 730; *Norendra v. Bhupendra*, I. L. R. 23 Cal. 374, 387; *Ramhit v. Satgur*, I. L. R. 3 All. 247 F. B.; *Janki v. Ghulam*, I. L. R. 5 All. 201; *Fateh v. Gopal*, I. L. R. 7 All. 424; *Mahomed v. Payag*, I. L. R. 10 All. 228; *Bhagat v. Chint*, Punj Record No. 28 of 1885; *Bhagabutty v. Ashutosh*, 8 C. W. N. 470.

It may be observed that under section 8, 37 & 38 Vict., c. 57, the right to take proceedings to enforce a judgment may be saved by acknowledgment or payment: *Jay v. Johnstone*, 1893, 1 Q. B., p. 25, on appeal, p. 189, where at p. 190, Lindley, L. J., opened his judgment with the following remark: "The question raised by this appeal is a very important one, namely, whether proceedings can be taken to enforce a judgment after twelve years, there having been no payment or acknowledgment in the meantime."

The proposed amendment is intended to make it clear that the provisions of the clause apply to applications for the execution of decrees.

Clause 22.—The expression "produce of land" may not include rent paid by tenants in occupation of the land. [See *Ummer v. Abdul*, I. L. R. 2 Mad. 165]. The proposed amendment will remove the doubt.

There is a conflict between the Calcutta and the Madras High Court on the one hand and the Allahabad High Court on the other on the question whether the word "debt" in this section includes what may be called a judgment-debt; the Calcutta and the Madras High Court answering the question in the negative: *Kader Bux v. Gour*, 6 C. W. N. 766; *Periasami v. Krishna*, I. L. R. 25 Mad. 431, 442; *Kuppu v. Rengu*, I. L. R. 27 Mad. 608; *Srinivasa v. Ponnu*, I. L. R. 28 Mad. 40, and the cases of *Kally v. Heera*, I. L. R. 2 Cal. 468, and *Mungal v. Shama*, I. L. R. 4 Cal. 708, decided under sections 20 and 21 of Act IX of 1871; and the Allahabad High Court answering it in the affirmative: *Roshan v. Mata*, I. L. R. 26 All. 36; *Janki v. Ghulam*, I. L. R. 5 All. 201; *Ramhit v. Satgur*, I. L. R. 3 All. 247; *Muhamad v. Payag*, I. L. R. 16 All. 228; *Ashanullah v. Dakhina*, I. L. R. 27 All. 575. It seems that acknowledgments and payments should in this respect have the same effect, and it may be observed that under section 8, 37 & 38 Vict., c. 57, a payment would save the right to take proceedings to enforce a judgment; *Jay v. Johnstone* (1893), 1 Q. B. 189.

The explanation is added to remove this conflict.

Clause 23 (1).—There is a conflict of authority on the question whether a guardian of a minor is an agent within the meaning of these sections. In *Tilluck v. Chutta*, I. L. R. 26 All. 598, it was held that a payment made by a natural guardian of certain minors of interest due on a bond executed by their deceased father did not meet the requirements of section 20; in *Wajibun v. Kadir*, I. L. R. 13 Cal. 292, it was held that an acknowledgment given by the natural guardian of a minor was not enough to give the creditor a fresh period of limitation, and the same view was taken in *Maharana v. Vadilal*, I. L. R. 20 Bom. 61. On the other hand, in *Annapaganda v. Sanga*, I. L. R. 26 Bom. 221 F. B., it was held that a payment made or acknowledgment given by a guardian appointed under Act VIII of 1890, if it was within the powers of the guardian under section 27 of the Act, would be sufficient; payment made by such a guardian who had borrowed money on a bond for the benefit of the minor was held to be a good payment under section 20; *Norendra v. Raicharan*, I. L. R. 29 Cal. 647; and an acknowledgment made in the course of certain execution proceedings by the pleader of a minor judgment-debtor was held to be within the requirements of section 19 in *Narendra v. Bhupendra*, I. L. R. 23 Cal. 374, at p. 387; and in *Sobhanadri v. Sriramulu*, I. L. R. 17 Mad. 221, an acknowledgment made by a natural guardian was held to meet the requirements of section 19. In *Beti Maharani v. Collector of Etawa*, I. L. R. 17 All. 198 P.C., an acknowledgment made by the Court of Wards on behalf of a person who had been declared disqualified on her own application was held to be sufficient; it may be doubted, however, whether such a disqualified proprietor is a person under disability in the same sense as a minor or an idiot or an insane person.

It may be observed that acknowledgments and payments made by guardians and managers are almost always made for some benefit to the estate of the person under disability, e.g., to avert an impending suit; it would be manifestly unfair, after a creditor has, at the request of the guardian, accepted a payment or an acknowledgment and refrained from suing at once, to allow the minor afterwards to say that the creditor's remedy has become barred.

The addition of this sub-clause will remove the conflict.

Clause 24.—The proposed amendment is recommended in the fourth schedule annexed to the Civil Procedure Code Bill, 1907. In the notes annexed to their report, the Special Committee made the following observation with reference to this amendment:

"The Committee have amended section 22 of the Limitation Act to supply an omission which has been noticed by the High Courts, namely, the absence of any provision with

regard to a devolution of interest *pendente lite* where it takes place otherwise than by reason of death. The section as amended will include not only cases in which a devolution of interest takes place *pendente lite* owing to death but also to other cases in which such devolution occurs."

Section 26.

It is also proposed to save cases where a plaintiff has been made a defendant or *vice versa* from the operation of this clause: *Jibanti v. Gokul*, I. L. R. 19 Cal. 760; *Khaden v. Rama*, I. L. R. 17 Mad. 12.

Clause 28.—A clause has been added to provide a rule for the acquisition of easements against the Government.

It is the last clause of section 15 of the Indian Easements Act, V of 1882. There is a conflict on the question whether section 26 applies against the Government. In *Arzan v. Rakhal*, I. L. R. 10 Cal. 214, 219, Garth, C. J., went on the assumption that it did; whereas in *Secretary of State v. Mathura Bai*, I. L. R. 14 Bom. 213, and *Viresa v. Tattaya*, I. L. R. 8 Mad. 467, it has been held that it does not.

Sixty years is the period of limitation applicable against the Government.

Illustration (b) has been omitted as it has been pointed out that it goes beyond the terms of the section which does not require "actual user": *Koylas v. Pudao*, I. L. R. 7 Cal. 132.

This illustration does not occur under section 15 of the Indian Easements Act, V of 1882.

Sections 1, 2 and 6.

Clause 31.—Portions of section 2 have been omitted as unnecessary, having regard to the provisions of the General Clauses Act, 1897, section 6 (a), (c), and section 8.

Sub-clause (2) (b).—The Madras Regulation, VI of 1831, has been repealed except as to the scheduled districts in Madras by the Madras Hereditary Village-offices Act (Mad. Act III), 1895. This Act, however, clearly provides special rules of limitation for suits, appeals and applications, making certain sections of the Limitation Act applicable thereto. Sub-clause (1) (b) will therefore save the periods prescribed by this Act from being altered or affected by anything herein contained and it need not be specifically mentioned.

Sub-clause (3).—The sections of the Act corresponding to clauses 28 and 29 of the Bill were repealed by the Indian Easements Act, V of 1882, in the Provinces to which it applies; this sub-clause is added to provide that these provisions of the Bill shall not affect the Easements Act.

New.

Clause 32.—This clause provides for cases in respect of which the period of limitation has been shortened by the Bill. It proceeds on the lines of the last clause in section 2 of the Act (now repealed by the Repealing and Amending Act, 1891).

New.

Clause 33 (1).—The Privy Council has held in the recent case of *Vasudeva v. Srinivasa*, 11 C. W. N. 1005, that article 147 (providing a period of sixty years) is applicable only to suits on English mortgages, and that suits on all other mortgages are governed by the twelve years rule contained in article 132. Previous to this decision, the law, as laid down in the decisions of the High Courts of Bombay, Madras and Allahabad, was that article 147 applied to every suit by a mortgagee in which he asked either for foreclosure or for sale: *Motiram v. Vital*, I. L. R. 13 Bom. 90 F. B.; *Datto v. Vithu*, I. L. R. 20 Bom. 408 F. B.; *Narayana v. Venkata*, I. L. R. 25 Mad. 220 F. B.; *Shib v. Ganga*, I. L. R. 6 All. 551 F. B.

The result has been that in the said territories a large number of mortgage-suits for which the period of limitation had hitherto been believed to be sixty years would be found to be barred by limitation.

This sub-clause is meant to provide for these suits; as also for the continuance of pending suits.

New.

Clause 33 (2).—This sub-clause is proposed to provide for the restoration of suits of the description mentioned above which have been dismissed on the ground of limitation since the date of the Privy Council decision. It proceeds on the lines of section 12, Act XXIII of 1861.

Section 2.

Clause 34 and Schedule III.—The Indian Limitation Act, 1877, and the several general enactments amending it are proposed to be repealed.

Notes on schedules.

SCHEDULE I.

This is Schedule II of the Act. The existing numbering has been retained as far as possible.

Article 5.

Article 5.—This amendment has been proposed in the fourth schedule of the Civil Procedure Code Bill, 1907. Clause 128 (f) of the Civil Procedure Code Bill proposes to authorize the framing of rules extending the summary procedure to the trial of suits other than suits on negotiable instruments.

Article 11.

Article 11.—The article is proposed to be amended so as to provide for all cases in which the Civil Procedure Code Bill proposes to give a right of suit to challenge orders passed in proceedings relating to resistance and obstruction to the delivery of possession of property to a decree-holder or to a purchaser of property sold in execution of a decree and to dispossession in such delivery of possession.

Article 33 has been divided in order to preserve the numbering of the present Act. Article 34 of the Act is proposed to be omitted.

A wife, even if a minor, should not be looked upon by the law as a chattel and an object of possession. The Civil Procedure Bill of 1907 has left out the provision relating to a decree for the recovery of a wife (O. XXI, r. 32).

Article 35 of the Act is also proposed to be omitted.

The scope of this article is very limited. It does not apply to cases arising under the Indian Divorce Act. The Allahabad High Court has held that it does not apply to Hindus or Muhammadans, as their personal law does not require an antecedent demand to sustain a suit for restitution of conjugal rights, nor make restitution unenforceable against a minor, and it has further held that the withholding of conjugal rights by either party is a continuing wrong, and that a claim for restitution cannot be barred by limitation: *Binda v. Kaunsilia*, I. L. R. 13 All. 126, 146. The same view was taken in *Bai Sari v. Saukla*, I. L. R. 16 Bom. 714. These views have been so far modified by the rulings of the Calcutta and Madras High Courts and by the later rulings of the Bombay High Court as to make the article applicable to Hindus and Muhammadans in cases of suits preceded by demand and refusal as mentioned in the third column: *Dhunjibhoy v. Hirabai*, I. L. R. 25 Bom. 644 F. B.; *Asirunnissa v. Buzloo*, I. L. R. 34 Cal. 79; *Saravanai v. Poovayi*, I. L. R. 28 Mad. 436. The operation of the article may be easily avoided by a party if he simply refrains from making a demand which, it may be noted, is not under the Hindu or Muhammadan law necessary to give rise to a cause of action. It is a very usual thing in Hindu and Muhammadan families for a wife to go and stay with her parents or brothers and the effect of this article is that if owing to any domestic quarrel the wife should in a fit of temper refuse to return, the husband would be compelled to take the matter into Court within two years.

Article 44.—The article is proposed to be amended so as to be applicable to all Article 44 transfers of property.

It has been held in one case that the word sale does not include a mortgage or a lease: *Ramausar v. Raghubar*, I. L. R. 5 All. 490.

Article 60.—There is conflict on the question whether money deposited with a banker Article 60. is a loan or a deposit.

In *Issur v. Jibani*, I. L. R. 16 Cal. 25, Wilson, J., held that it is a deposit and not a loan within the meaning of article 59.

In *Ichha v. Natha*, I. L. R. 13 Bom. 338, it was held that a deposit with a banker is ordinarily a loan.

In *Dharam v. Ganga*, 4 All. Law Journal, 628, it has been held that ordinary dealings between native bankers and their customers are matters of loan within the meaning of article 59.

In *Manchaji v. Dorabji*, I. L. R. 19 Bom. 775, and *Perundavi v. Nammalvar*, I. L. R. 18 Mad. 390, at p. 394, it was held that whether a particular transaction was a loan or a deposit would depend on the facts of each case.

The amendment suggested would bring the law into conformity with the view taken by ordinary men of business in this country.

Article 99.—It was held in *Patabhi v. Ramayya*, I. L. R. 20 Mad. 23, that this article Article 99. could not apply to a case where not the whole but only a part of the money due under a joint decree was realized from the plaintiff by the sale of his property by the Court and that it was doubtful whether such a case fell under article 61 or under the general article 120.

In *Raja of Visianagram v. Raja Satrucherla*, I. L. R. 26 Mad. 686, at p. 716, Bhashyam Ayyangar, J., pointed out that a strictly grammatical and literal interpretation of this article would lead to anomalous if not absurd consequences, and observed that he would be strongly inclined to read the section as if after the words "had paid" there were the words "on account of". He held that each time that an amount is paid by or levied from the party seeking contribution in excess of his share, he has a right of suit for contribution in respect of such payment. Referring to this case, Stanley, C. J., in *Ibn Hasan v. Brijbhukan*, I. L. R. 26 All. 407, observed as follows: "It seems to me very questionable whether the learned Judge has not taken too great a liberty of interpolation with the article in question"—p. 425.

The question whether the word "paid" in article 100 of Act IX of 1871 (which corresponded to the present article 99) covered a case where money was realized by the sale of plaintiff's property was left in doubt by Mitter and Maclean, JJ., in *Fuckoruddin v. Mohima*, I. L. R. 4 Cal. 529.

The amendments proposed would meet the points indicated above.

Article 111.—The amendment proposed will make it clear that this article is applicable only to suits to enforce the personal liability of the purchaser. Article 111.

It has been held by the High Courts of Bombay, Madras and Allahabad that a suit by an unpaid vendor to enforce his charge on the land for the unpaid purchase-money is governed by article 132 and not by this article: *Chunilal v. Bai Jetha*, I. L. R. 22 Bom. 846; *Virachand v. Kumaji*, I. L. R. 18 Bom. 48; *Har v. Muhamdi*, I. L. R. 21 All. 454; *Ramakrishna v. Subrahmania*, I. L. R. 29 Mad. 305 F. B., overruling *Natesan v. Soundra*, I. L. R. 21 Mad. 141, and *Avuthala v. Dayumma*, I. L. R. 24 Mad. 233.

Article 116.—It is proposed to amend this article so as to exclude from its operation Article 116. suits for arrears of rent payable under a registered lease.

There is conflict on the question whether a suit for arrears of rent due under a registered lease is governed by this article or by article 110 which provides three years for

suits for arrears of rent. The Calcutta High Court has held that such suits, if not governed by the Bengal Tenancy Act (that is, if the rent is not due in respect of agricultural lands) would come under article 116 and not under article 110: *Umesh v. Adarmoni*, I. L. R. 15 Cal. 221; *Raneeunge Coal Company v. Jadunath*, I. L. R. 19 Cal. 489; suits for rent due under a registered contract are also held to be governed by article 116 by the Madras High Court: *Vythilinga v. Thetchama*, I. L. R. 3 Mad. 76. The Allahabad High Court has however held that such suits are governed by article 110, which specifically deals with suits for arrears of rent: *Ramnarain v. Kamta*, I. L. R. 26 All. 138.

The ruling of the Calcutta and Madras High Courts would reduce the scope of article 110 to cases of tenancies for a term not exceeding one year and monthly tenancies, as all other tenancies must be created by registered instruments.

Article 118.—The amendment is proposed to remove a conflict of authority, and it adopts the view taken by Bhashyam Ayyangar, J., in *Chiruvolu v. Chiruvolu*, I. L. R. 29 Mad. 390.

In a suit to set aside an adoption where but for the adoption the estate would be in a Hindu female a remote reversioner has been held to claim through the presumptive reversioner in the following cases:—*Ayyadori v. Solai*, I. L. R. 24 Mad. 405; *Chiruvolu v. Chiruvolu*, I. L. R. 29 Mad. 390 F. B.; *Harnath v. Mandil*, I. L. R., 27 Cal. 379, at p. 403; *Srinivasa v. Hanmant*, I. L. R. 24 Bom. 260, at p. 266; *Siddheswar v. Sham Chand*, 23 W. R. 285 (decided under Act IX of 1871); *Mrinomoyee v. Bhoobun*, 23 W. R. 42 (decided under Act XIV of 1859).

The contrary view has been taken in the following cases:—*Abinash v. Harinath*, I. L. R. 32 Cal. 62, at p. 71; *Bagwanta v. Sukhi*, I. L. R. 22 All. 33, at pp. 44, 45.

In the case of *Chiruvolu v. Chiruvolu*, I. L. R. 29 Mad. 390 F. B., however, the Court observed that in suits relating to the alienations by a qualified owner (such as a Hindu widow) the presumptive reversioner cannot, on the current of authority, be held to represent remote reversioners (at p. 411). The conflict therefore is limited to suits relating to adoption.

Article 163.—The amendment is recommended by the Special Committee on the Civil Procedure Code Bill, 1907.

Article 166.—The amendment is recommended by the same Committee. In the notes on Schedules annexed to their report they observe as follows:

"The Code [s. 312] contemplates the confirmation of a sale of immoveable property immediately on the expiration of the thirty days allowed by article 166 of the Limitation Schedule. But the period allowed for an application to set aside a sale on the ground that the judgment-debtor had no saleable interest therein is sixty days [article 172]. The result is that in some Provinces the confirmation of a sale is delayed for sixty days; whilst in other Provinces, sales which have been already confirmed are liable to be set aside. The Committee think that in the matter of limitation an application under section 313 should be brought into line with an application under section 312, and they therefore propose to repeal article 172 and to amend article 166 so as to include applications under section 313."

Article 171.

Articles 171, 172.—Article 171 of the Act has been broken up into these two articles. References to the sections have been omitted and words have been added to describe the order of dismissal referred to.

Article 172 of the Act is omitted from the Bill. [Vide notes on article 166.]

Article 174 of the Act is omitted as it has been repealed by the Provincial Insolvency Act, 1907, with effect from the 1st January, 1908.

Articles 175A, 175B, 175C.

Articles 176, 177.—These two articles have been substituted for the three articles in the Act. Article 177 is recommended by the Special Committee of 1907.

Article 177.

Article 179.—In article 177 of the Act the description of the application intended to be governed by it does not seem to be accurate.

Section 598 of the Code deals with the application to be made by an intending appellant; section 603 deals with the admission of the appeal. Section 598 requires that the application should pray for a certificate that the case is a fit one for appeal; section 603 does not require that any application should be made for the admission of the appeal.

It may be noted that the word *may* in section 603 of the present Code has been replaced by the word *shall* in O. XLIV, r. 8, of the Code of Civil Procedure Bill, 1907.

Article 179.

Article 181, third column, clause 2.—There is conflict on the question whether, where an appeal has been withdrawn, time would run from the date of withdrawal of the appeal or from the date of the original decree.

In *Peria v. Lakshmi*, I. L. R. 30 Mad. I. F. B., it has been held by the Madras High Court that in case of an appeal which has been withdrawn time should run from the date of the order of the Appellate Court dismissing the appeal on such withdrawal.

The Bombay High Court has on the other hand held that when an appeal is withdrawn time would run from the date of the original decree: *Abdul v. Moidin*, I. L. R. 22 Bom. 500, at p. 506.

New.

Article 181, third column, clause 4.—There is conflict on the question whether when a decree has been amended time for an application for execution would run from the date of the decree or from the date of the amendment.

In *Kali Prasanna v. Lal Mohan*, I. L. R. 25 Cal. 258, the application for amendment (to include in the decree certain costs which had been awarded by the judgment) was regarded as an application for review; the same view was taken in *Venkata v. Venkata*, I. L. R. 24 Mad. 25, where the application was to amend the amount of costs entered in decree; and in *Amar v. Asad*, I. L. R. 32 Cal. 908, it was held that time would run from the date of amendment as the amended decree was the final decree to be executed.

The Allahabad High Court on the other hand has held that an application under section 206 of the Code of Civil Procedure to amend a decree so as to bring it into conformity with the judgment is not an application for review, and that time will run from the date of the decree as originally drawn up: *Ahsan v. Dakkhini*, I. L. R. 27 All. 575; *Kallu v. Fahiman*, I. L. R. 13 All. 124; *Muhammad v. Muhammad*, I. L. R. 17 All. 39; and *Daya v. Nanhi*, I. L. R. 20 All. 304.

Article 181, third column, clause 6.—There is conflict on the question whether the date referred to in this clause is the date of the order of the Court directing notice to issue or the date on which the notice actually issues from the Court, some time being usually taken in the drawing up and signing of the notice.

The Calcutta and the Madras High Courts have held that the date of actual issue is meant: *Kedareswar v. Mohin*, 6 C. W. N. 656; *Ratan v. Deb*, 10 C. W. N. 303; *Cheruvath v. Nerath*, I. L. R. 30 Mad. 30.

The Bombay and the Allahabad High Courts have held that where notice has been issued time would run from the date of the Court's order to issue the notice: *Govind v. Dada*, I. L. R. 28 Bom. 416; *Damoda v. Sonaji*, I. L. R. 27 Bom. 622; *Udit v. Rampertab*, 1 All. W. N. 147.

SCHEDULE II.

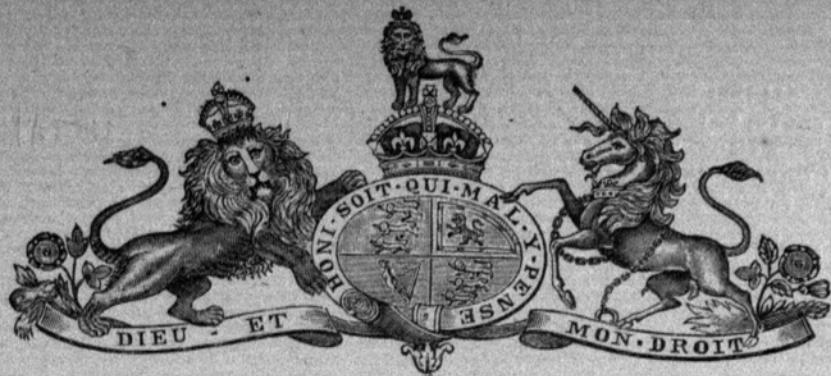
This schedule specifies the territories in which previous to the recent decision of the Privy Council (11 C. W. N. 1005) the law was held to be that the period of limitation for every suit by a mortgagee, whether he asked for foreclosure or for sale, was sixty years as provided by article 147 and not twelve years as provided by article 132.

The list is not exhaustive as it is not definitely known whether there are not other Provinces or Districts where the same view of the law prevailed.

SCHEDULE III.

The enactments proposed to be repealed are specified in this schedule.

J. M. MACPHERSON,
Secretary to the Government of India.



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Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced in the Council of the Governor General of India for making Laws and Regulations, Reports of Select Committees presented to the Council, and Bills published under Rule 23.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill further to amend the Coroners Act, 1871, and the Prisoners Act, 1900, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 31st January 1908:—

LEGISLATIVE DEPARTMENT.

We, the undersigned, Members of the Select Committee to which the Bill further to

From High Court, Calcutta, No. 84, dated 4th February, 1907.
[Papers No. 1.]

From Government, Bombay, No. 1045, dated 18th February, 1907, and enclosures. [Papers No. 2.]

From Government, Bengal, No. 936-J., dated 26th February, 1907, and enclosures. [Papers No. 3.]

From Government, Bengal, No. 1094-J., dated 4th March, 1907, and enclosure. [Papers No. 4.]

amend the Coroners Act, 1871, and the Prisoners Act, 1900, was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

2. The alterations we have suggested in the Bill are mostly of such an unimportant nature as not to require explanation by us. The only changes to which we would call attention are—

- (i) the amendment of section 11 of the Act, proposed by the new clause 3, with the object of making it clear that a further inquisition may be held whenever it is considered necessary or desirable in the interests of justice;
- (ii) the widening of the proviso to section 15 of the Act, proposed by clause 3 of the Bill as introduced (now clause 4), so as to enable the Coroner, with the consent of the majority of the jury, to dispense with the necessity for viewing the body, not only when death is due to some infectious disease, but whenever satisfactory medical evidence is produced to show that no advantage will result from such viewing; and

(iii) the addition we have made, on the suggestion of the Bengal Chamber of Commerce, to the new section 18A, proposed by clause 5 of the Bill as introduced (now clause 6), which now makes reports of Chemical Examiners under the Coroners Act receivable as evidence in any subsequent proceedings which may be taken under the Code of Criminal Procedure.

3. The publication ordered by the Council has been made as follows :—

In English.

<i>Gazette.</i>	<i>Date.</i>
Gazette of India	19th January, 1907.
Bombay Government Gazette	24th January, 1907.
Calcutta Gazette	23rd January, 1907.

In the Vernaculars.

<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
Bengal	Hindi	29th January, 1907.
	Bengali	5th February, 1907.
	Uriya	13th February, 1907.

4. We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended.

H. ADAMSON.

H. ERLE RICHARDS.

G. K. GOKHALE.

A. A. APCAR.

W. W. DREW.

The 29th January, 1908.

[The portions printed in italics denote the alterations proposed by the Select Committee.]

No. II.

A Bill further to amend the Coroners Act, 1871, and the Prisoners Act, 1900.

IV of 1871.
III of 1900.

WHEREAS it is expedient further to amend the Coroners Act, 1871, and the Prisoners Act, 1900; It is hereby enacted as follows:—

1. This Act may be called the Coroners (Amendment) Act, 1908.
Short title.

2. In section 9 of the said Act, for the word "buried" the words "disposed of" shall be substituted.

3. In section 11 of the said Act, for the words "where the first was insufficient" the words "where the Coroner considers it necessary or desirable in the interests of justice to take a further inquisition" shall be substituted.

4. To section 15 of the said Act the following shall be added, namely:—

"Provided that the Coroner may, with the concurrence of a majority of the jury, dispense with a view of the body, if he is satisfied, from medical evidence or medical certificates, that no advantage would result from such viewing."

5. In section 17 of the said Act, for the words "Act No. XV of 1869 (to provide facilities for obtaining the evidence and appearance of prisoners and for service of process upon them)," the words and figures "Part IX of the Prisoners Act, 1900," shall be substituted.

6. After section 18 of the said Act, the following shall be inserted, namely:—

"18A. Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Act, may be used as evidence in any inquest under this Act and in any subsequent inquiry, trial or other proceeding under the Code of Criminal Procedure, 1898."

V of 1898.

7. To section 21 of the said Act the following shall be added:

"and the whole, or such part thereof as to the Coroner seems fit, shall, in default of attendance by the jurors, be recoverable in the same manner as a fine imposed under section 31."

8. For section 25 of the said Act the following shall be substituted:

Substitution of new words shall be substituted, section 25, Act IV of 1871, namely:—

"25. When the jury or a majority of the jury find that the death of the deceased person was occasioned by an act which amounts to an offence under any law in force in British India, the Coroner shall immediately after the inquest forward a copy of the inquisition, together with the names and addresses of the witnesses, to the Commissioner of Police."

9. For section 26 of the said Act the following shall be substituted:

Substitution of new words shall be substituted, section 26, Act IV of 1871, namely:—

"26. The Coroner may also, where the verdict justifies him in so doing, issue his warrant for the apprehension of the person who is found to have caused the death of the deceased person, and send him forthwith to a Magistrate empowered to commit him for trial."

10. Section 27 of the said Act is hereby repealed.

Repeal of section 27, Act IV of 1871.

II. In section 28 of the said Act, for the word "burial" the word "disposal" shall be substituted.

12. In the Second Schedule of the said Act, for the words "on view of the body of A. B. then and there lying dead" the words "in the case of A. B. deceased" shall be substituted.

13. In section 11 of the Prisoners Act, 1900, for the words "Justice of the Peace or Coroner" the words "or Justice of the Peace" shall be substituted.

J. M. MACPHERSON,
Secretary to the Government of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 15, 1908.

~~Separate paging is given to this Part in order that it may be filed as a separate compilation.~~

PART V.

Bills introduced in the Council of the Governor General of India for making Laws and Regulations, Reports of Select Committees presented to the Council, and Bills published under Rule 23.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 14th February, 1908 :—

LEGISLATIVE DEPARTMENT.

We, the undersigned Members of the Select Committee to which the Bill to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature was referred, have considered the Bill and the papers noted in the appendix, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

2. The chief feature of novelty in the Bill is the re-arrangement of the clauses and the relegation of minor provisions to a schedule which may be altered by High Courts. We find from the papers before us that this scheme has met with the approval of every Local Government and of all the High Courts in India. In our opinion it will give a much needed elasticity to our judicial procedure and will enable minor defects to be remedied as they arise without resort to the Legislature, and we recommend it to the Council. We have introduced two changes into Part X of the Bill relating to the rule-making powers. In the first place we have provided that rules must be published before they are made; the result will be that section 23 of the General Clauses Act will apply and that there will be an opportunity for the public to offer criticisms on any proposals for alterations of procedure, before those proposals are finally passed into law. We have also made a change in the composition of the Rule Committees. It has been suggested by more than one authority that the interests of the Mofussal were not sufficiently represented on those Committees as constituted under the Bill. We recognise

the force of this criticism and have accordingly provided that there shall be a Subordinate Judge on each Rule Committee and that the Vakil or Pleader on the Committee shall be enrolled, but need not be practising, in the High Court, so that a Vakil or Pleader practising in the Mofussal will be eligible. We further recommend that the Bill shall not come into operation until the 1st January 1909, in order that the public and the profession may have an opportunity of making themselves familiar with the re-arrangement.

3. We have carefully considered the criticisms on the Bill as introduced and the changes which we recommend are summarised below. It will be observed that we do not advise any departures of importance from the conclusions of the Special Committee which met at Simla during the past summer. That Committee had before it a mass of opinions from judicial and other authorities all over India dealing with every point of civil procedure, and they arrived at their conclusions only after a careful consideration of those opinions. We should not therefore in any case have dissented from them without strong reason, but in our judgment those conclusions are right and we accept them. Since the Bill was introduced it has been again examined and revised by some of our Colleagues and the criticisms on it have been digested in the Legislative Department. By these means our deliberations have been much expedited.

4.

CLAUSES.

Clause 2 (2).—The definition of "decree" has been generally accepted.

Clause 11.—We have restored the word "former" and have inserted explanation I on the suggestion of Sir Bhashyam Iyengar to remove a conflict of authority as to the meaning of the expression "former suit".

Explanation V has been omitted. We think it is liable to misconstruction and that the law is well established apart from the explanation.

Clause 22.—We have omitted clause 22 of the Bill as introduced as in our opinion it is unnecessary. We think that sufficient provision is made for transfers under the succeeding clause.

Clause 23.—We have omitted the proviso, which compelled applications to the High Courts under this clause to be made through the District Court. This in our opinion merely duplicates applications and is undesirable.

Clause 25.—Clause 25 of the Bill as introduced has been rendered unnecessary by the omission of clause 22. We have accordingly taken it out and have put in its place a new clause taking power for the Governor General in Council to transfer cases from one High Court to another under certain circumstances. We think that the exercise of such a power may sometimes be necessary and it has been brought to our notice that the absence of any provision on the point in the existing Code has given rise to difficulty. The new clause proceeds on the analogy of section 527 of the Code of Criminal Procedure, 1898.

Clause 34.—The words "not being a decree for the enforcement of a mortgage or charge" have been omitted in this clause and elsewhere in order to make it clear that a decree for the payment of money does not include a decree for sale in enforcement of a mortgage or charge.

Clause 46.—We think that a decree-holder who has obtained an interim attachment should not be required to re-attach the property if before the determination of the attachment he applies for execution against the property, and we have altered this clause accordingly. There will now be only one attachment.

Clause 51.—We have added a power to execute a decree by appointing a receiver, on the suggestion of the Advocate General of Madras.

Clause 54.—We have restored section 265 of the existing Code. It has been pointed out that the provision in the Bill as introduced was opposed to the practice in some provinces under which all partitions of land paying revenue to Government are effected by the revenue-authorities.

Clause 55.—We have carefully considered the provision as to breaking open dwelling-houses and have come to the conclusion that it should be limited to dwelling-houses in the occupancy of the judgment-debtor.

Clause 57.—Sub-clauses (2) to (6) have been relegated to Rules (O. XXI, r. 39).

Clause 59.—The remaining provisions as to the release of judgment-debtors have been brought up from the Rules and incorporated in this clause.

Clause 60 (1) (g).—We have omitted the words "military or civil," because they appear to be of no value. The word "pensioners" of itself covers every class of pensioner.

The exemption has been extended so as to cover pensions granted out of any service family pension fund notified in that behalf by the Governor General in Council.

Clause 60 (1) (l).—This has been extended at the request of the Government of Burma.

Clause 61.—The words “be exempted from liability to attachment or sale in execution of a decree” have been substituted for the words “be released from attachment and shall be free from liability to sale in execution of a decree” in order to make it clear that the exemption extends to produce which has been hypothecated.

Clause 62 has been brought into line with clause 55 as now amended.

Clause 66 (1).—The wording has been altered on the suggestion of the Hon'ble Mr. Justice Aikman so as to put the meaning beyond doubt.

Clause 79 (2).—This saving was accepted by the Select Committee of 1903 and we think it desirable to have it in the Bill in order to avoid possible doubt.

Clause 92 (1).—It has been suggested to us by several authorities that Local Governments should be empowered to invest Courts subordinate to District Courts with power to try cases under this clause, and we think that this suggestion should be accepted. The necessary words have been added.

Clause 96 (3) of the Bill as introduced has been omitted. The case law on the subject is sufficiently clear and considerable objection has been taken to the sub-clause.

Clause 98.—The wording of the proviso has been altered; it now deals only with the decision on the point of law referred.

Clause 104.—Sub-clause (1) (b) has been added in order to give a right of appeal against the decision of the Court on a special case: this is in accordance with the recommendation of the Special Committee, but appears to have been omitted from the Bill by mistake.

Clause 107.—Sub-clause (1) is new. We think it desirable to have in the body of the Code a general provision about the powers of an Appellate Court.

Clause 134 is new. It supplies an omission.

Clauses 142 and 143 have been brought up from the Rules. We think they should be in the body of the Code.

Clause 144.—Sub-clause (2) has been added on the suggestion of the Calcutta High Court. We agree that restitution which may be obtained by application under this clause should not be made the subject of a separate suit.

5.

SCHEDULE I.

Order I.

Rules 1 and 3.—The words “act or” have been added before the word “transaction”.

Rule 3.—This rule has been amplified so as to bring it into line with rule 1.

Rule 5.—The words “cause of action” have been struck out. They have given rise to considerable difficulty in England.

Rule 8.—We have, on the suggestion of the Advocate General of Madras, added the words “or for the benefit of” after the words “on behalf of”.

Order III.

Rule 4 (3).—We have adopted the alternative draft suggested by the Simla Committee in their Report.

Order VI.

Rule 18.—We have substituted the words “he shall not be permitted to amend . . . as the case may be” for the words “such order to amend . . . become void.”

Order VII.

Rule 17 (1).—On the suggestion of the British Indian Association the word “account” has been substituted for the word “book”.

Order IX.

Rule 4.—We have struck out the provisions about limitation contained in this rule. These provisions will be incorporated in the Bill to consolidate and amend the Limitation Act.

Rule 13.—We think it necessary to provide specially for cases in which it may not be possible to set aside the decree as against the applicant only.

Order XX.

Rule 18.—This rule has been altered so as to correspond with the amended clause 54.

Order XXI.

Rule 1 (2).—This sub-rule has been inserted on the suggestion of the British Indian Association.

Rule 7.—The words "or of the jurisdiction of the Court which passed it" have been omitted. In our opinion a Court executing the decree of another Court ought not to go into any question as to the jurisdiction of the Court which passed it.

Rule 20.—This rule is new. It is inserted in order to make it clear that the provisions as to cross-decrees and cross-claims apply to the case of mortgage-decrees. The rule also makes it clear that the expression "decree for the payment of money" and other similar expressions in the Code do not include a decree for sale in enforcement of a mortgage or charge.

Rule 45.—We have decided to recommend the omission of this rule from the Bill. It was taken from the Bill of 1903 but met with considerable criticism and strong objection has been taken to it by the Madras Board of Revenue and the British Indian Association. In our opinion the procedure prescribed in this rule is cumbrous and there would be little or no practical advantage from it.

Rule 90.—The words "or fraud" have been added after the word "irregularity". We think that the existing law as contained in section 311 of the present Code is defective, the omission in the section to refer to fraud as a ground for setting aside a sale having led some Courts to hold that an order on an application setting up fraud as a ground for relief is, unlike an order made on an application under section 311, a decree and open to second appeal. This result, which often involves a considerable prolongation of these proceedings, is in our opinion undesirable. We think that applications for the setting aside of sales should, so far as the procedure applicable to them is concerned, stand on the same footing whether they are based on the ground of irregularity or on the ground of fraud.

Rules 95 and 96.—We have struck out the provisions about limitation contained in these rules. We agree with the Hon'ble Mr. Justice Miller that it would be more appropriate to incorporate them in the Limitation Act, and we have suggested their incorporation in the Bill to amend and consolidate that Act which is now before Council.

Order XXII.

Rules 3 and 4.—Rules 3 and 4 have been amended so as to provide that if no application for substitution is made within the time allowed by law the suit shall abate. We have struck out the provision that the Court may make an order declaring the abatement as in our opinion it is unnecessary and likely to give rise to difficulty.

Rule 6.—The provision as to antedating the judgment has been struck out and in its stead we suggest a provision to the effect that the judgment shall have the same force and effect as if it had been pronounced before the death took place. In our opinion this is all that is required.

Order XXXIV.

Some of the rules in this Order have been redrafted.

The Transfer of Property Act does not contain any provision for the passing of a final decree in cases where payment is made in accordance with the terms of the preliminary decree. This is in our opinion an omission, and we have provided in rules 3 (1), 5 (1) and 8 (1) for the passing of final decrees in such cases.

We approve of the proposal to repeal the provisions of section 99 of the Transfer of Property Act. We think that those provisions have worked considerable hardship and are not really needed. The first part of the section enacts that a mortgagee shall not bring the mortgaged property to sale otherwise than by instituting a suit under section 67 of the Act. In so far as it precludes the mortgagee from selling the mortgaged property under a judgment unconnected with the mortgage-debt it is in our opinion inexpedient; it is beyond doubt competent to a mortgagee to purchase the equity of redemption from the mortgagor by an agreement subsequent to and distinct from the mortgage transaction, and we can see no reason why it should not be equally competent to him to have it sold in satisfaction of any claim which he may have against the mortgagor unconnected with the mortgage (*Khiarajmal v. Daim*, I. L. R. 32 Cal. 296; *Lisle v. Reeve*, 1902, A. C. 461). In so far as it precludes the mortgagee from selling the property under a judgment for the mortgage-debt, it serves no useful purpose. We understand that the provision was enacted to prevent mortgagees from suing their mortgagors on the debt as such and in execution selling the mortgagor's interest in the property; we, however, think that no such provision was needed, seeing that under the law as it stood prior to the Act the Courts never allowed the sale of a bare equity of redemption under a judgment on the covenant (*Syed Emam v. Rajcoomar*, 23 W. R. 187; *Khiarajmal v. Daim*, I. L. R. 32 Cal. 296).

Order XL.

Rule 4.—We have redrafted this rule on the lines of section 18 (4) of the Provincial Insolvency Act, 1907. We think that the power to imprison receivers is too wide and should be omitted.

Order XLI.

Rule 24.—We have struck out this rule as in our opinion it is unduly restrictive.

Order XLIII.

Rule 1.—We suggest that there should be appeals from orders pronouncing judgment against a party under Order VIII, rule 10, Order X, rule 4, and Order XVI, rule 20. These orders are under the present law appealable as decrees, but having regard to the definition of a decree in the Code they would no longer be appealable in that way, and we think it necessary to make them appealable as orders. We have also given an appeal against an order made under rule 21 of Order XI.

Appendices.—The forms have been amplified and, where necessary, redrafted. We think that, as now settled, they are an improvement on the forms in the present Code.

6. The publication ordered by the Council has been made as follows:—

In English.

<i>Gazette.</i>	<i>Date.</i>
Gazette of India	7th September, 1907.
Fort Saint George Gazette	1st October, 1907.
Bombay Government Gazette	3rd October, 1907.
Calcutta Gazette	18th September, 1907.
United Provinces of Agra and Oudh Government Gazette	21st September, 1907.
Punjab Government Gazette	27th September, 1907.
Burma Gazette	28th September, 1907.
Eastern Bengal and Assam Gazette	25th September, 1907.
Central Provinces Gazette	21st September, 1907.
Coorg District Gazette	2nd January, 1908.
Sind Official Gazette	26th September, 1907.

In the Vernaculars.

<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
Madras	Tamil	28th January, 1908.
	Telugu	7th and 28th January, 1908.
	Kanarese	{ 7th January, 1908.
	Malayalam	
Bombay	Marathi	{
	Gujrati	29th January, 1908.
	Kanarese	
Bengal	Bengali	21st January, 1908.
	Hindi	17th December, 1907.
	Uriya	27th December, 1907.
United Provinces	Urdu	18th January, 1908.
Punjab	Urdu	17th January, 1908.
Eastern Bengal and Assam	Bengali	8th February, 1908.
Coorg	Kanarese	{ 1st February, 1908.
	Marathi	

7. We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended.

H. ERLE RICHARDS.

MADHO LAL.

H. A. SIM.

RASHBEHARY GHOSE.

S. ISMAY.

MG. BAH TOO.

The 12th February, 1908.

APPENDIX.

Office memorandum from Government of India, Home Department, No. 1579, dated 18th October, 1907, and enclosures. [Papers No. 1.]

From Chairman, Public Meeting, Kumbakonum, dated 25th October, 1907. [Paper No. 2.]

" Secretary, Tinnevelly District Association, No. 331, dated 7th November, 1907. [Paper No. 3.]

" India Office, No. J. & P. 3458, dated 22nd November, 1907, and enclosure. [Papers No. 4.]

" Government, Bengal, No. 2690-J., dated 9th December, 1907, and enclosures. [Papers No. 5.]

" Chief Commissioner, North-West Frontier Province, No. 2125-G., dated 13th December, 1907. [Paper No. 6.]

" Government, Madras, No. 2019, dated 3rd December, 1907, and enclosure. [Papers No. 7.]

" ditto, No. 2021, dated 3rd December, 1907, and enclosure. [Papers No. 8.]

" Chief Commissioner, Baluchistan, No. 5549, dated 12th December, 1907, and enclosure. [Papers No. 9.]

" Chief Commissioner, Coorg, No. 1979, dated 16th December, 1907. [Paper No. 10.]

" Government, Burma, No. 497-L.—21, dated 13th December, 1907, and enclosures. [Papers No. 11.]

" Chief Commissioner, Central Provinces, No. 2032-V.—4-2, dated 17th December, 1907, and enclosures. [Papers No. 12.]

" Chief Commissioner, Ajmer-Merwara, No. 1496-C., dated 18th December, 1907, and enclosures. [Papers No. 13.]

" Government, Punjab, No. 1059, dated 20th December, 1907, and enclosures. [Papers No. 14.]

" Government, Bombay, No. 6858, dated 3rd December, 1907, and enclosures. [Papers No. 15.]

" Government, Eastern Bengal and Assam, No. 5599-J., dated 30th December, 1907, and enclosures. [Papers No. 16.]

" High Court, Calcutta, No. 97, dated 8th January, 1908. [Paper No. 17.]

" Government, Madras, No. 2154, dated 30th December, 1907, and enclosures. [Papers No. 18.]

" Government, United Provinces, No. 1361, dated 30th December, 1907, and enclosures. [Papers No. 19.]

" Government, Madras, No. 96, dated 20th January, 1908, and enclosures. [Papers No. 20.]

" ditto, No. 135, dated 27th January, 1908. [Paper No. 21.]

No. II.

THE CODE OF CIVIL PROCEDURE BILL.

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(Preliminary.)

[The portions printed in italics denote the alterations proposed by the Select Committee.]

No. II.

The bracketed marginal references relate to sections of the Code of Civil Procedure (Act XIV of 1882).

^
BILL

to

Consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature; It is hereby enacted as follows:—

PRELIMINARY.

[S. 1.]

Short title, commencement and extent. **I.** (1) This Act may be cited as the Code of Civil Procedure, 1908.

(2) It shall come into force on the first day of January, 1909.

(3) This section and sections 155 to 158 extend to the whole of British India: the rest of the Code extends to the whole of British India, except the Scheduled Districts.

[S. 2.]

2. In this Act, unless there is anything repugnant in the subject Definitions. or context,—

(1) "Code" includes rules:

(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 47 or section 144, but shall not include—

(a) any adjudication from which an appeal lies as an appeal from an order, or
(b) any order of dismissal for default.

Explanation.—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final:

(3) "decree-holder" means any person in whose favour a decree has been passed or an order capable of execution has been made:

(4) "district" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a "District Court"), and includes the local limits of the ordinary original civil jurisdiction of a High Court:

(5) "foreign Court" means a Court situate beyond the limits of British India which has no authority in British India and is not established or continued by the Governor General in Council:

(6) "foreign judgment" means the judgment of a foreign Court:

(7) "Government Pleader" includes any officer appointed by the Local Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader:

(8) "Judge" means the presiding officer of a Civil Court:

(9) "judgment" means the statement given by the Judge of the grounds of a decree or order:

(10) "judgment-debtor" means any person against whom a decree has been passed or an order capable of execution has been made:

(11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued:

(12) "mesne profits" of property means those profits which the person in wrongful possession [S. 211, expl.] of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession:

(13) "moveable property" includes growing crops: [New.]

(14) "order" means the formal expression of any decision of a Civil Court which is not a decree:

(15) "pleader" means any person entitled to appear and plead for another in Court, and includes an advocate, a *vakil* and an attorney of a High Court:

(16) "prescribed" means prescribed by rules:

(17) "public officer" means a person falling under any of the following descriptions, namely:—

- (a) every Judge;
- (b) every member of the Indian Civil Service;
- (c) every commissioned or gazetted officer in the military or naval forces of His Majesty, including His Majesty's Indian Marine Service, while serving under the Government;
- (d) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the Court, and every person especially authorized by a Court of Justice to perform any of such duties;
- (e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;
- (f) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;
- (g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment

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or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and

(h) every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty:

(18) "rules" means rules and forms contained in or made under this Act:

(19) "share in a corporation" shall be deemed to include stock, debenture stock, debentures or bonds: and

(20) "signed," save in the case of a judgment or decree, includes stamped.

3. For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court.

[S. 2.]

4. (1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.

[S. 4A.]

5. (1) Where any Revenue Courts are governed by the provisions of this Code in those matters of procedure upon which any special enactment applicable to them is silent, the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, declare that any portions of those provisions which are not expressly made applicable by this Code shall not apply to those Courts, or shall only apply to them with such modifications as the Local Government, with the sanction aforesaid, may prescribe.

(2) "Revenue Court" in sub-section (1) means a Court having jurisdiction under any local law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil nature.

6. Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

7. The following provisions shall not extend to Courts constituted under Provincial Small Causes Courts. the Provincial Small Causes Courts Act, 1887, or to Courts exercising the jurisdiction of a Court of Small Causes under that Act, that is to say,—

(a) so much of the body of the Code as relates to—

(i) suits excepted from the cognizance of a Court of Small Causes;

(ii) the execution of decrees in such suits;

(iii) the execution of decrees against immoveable property; and

(b) the following sections, that is to say,—

section 9,

sections 91 and 92,

sections 94 and 95 so far as they relate to injunctions and interlocutory orders, and

sections 96 to 112 and 115.

8. Save as provided in sections 24, 38 to 41, [S. 8.] Presidency Small Cause Courts. clauses (a), (b) and (c), sections 75, 76, 77 and 155 to 158, and by the Presidency Small Cause Courts Act, 1882, the provisions in the body of this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay.

PART I.
SUITS IN GENERAL.

JURISDICTION OF THE COURTS AND RES JUDICATA.

9. The Courts shall (subject to the provisions contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation.—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

10. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in British India having jurisdiction to grant the relief claimed, or in any Court

[S. 12.]

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(Part I.—Suits in General.)

beyond the limits of British India established or continued by the Governor General in Council and having like jurisdiction, or before His Majesty in Council.

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action.

[S. 13.] **11. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.**

Explanation I.—The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate *bonâ fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

[New.] **12. Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.**

[S. 14.] **13. A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of**

When foreign judgment not conclusive.

them claim litigating under the same title except—

- (a) where it has not been pronounced by a Court of competent jurisdiction;
- (b) where it has not been given on the merits of the case;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of British India in cases in which such law is applicable;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;
- (e) where it has been obtained by fraud;
- (f) where it sustains a claim founded on a breach of any law in force in British India.

14. The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

PLACE OF SUING.

15. Every suit shall be instituted in the Court in which suits of the lowest grade competent to be instituted.

16. Subject to the pecuniary or other limitations prescribed by any where subject-matter law, suits—

- (a) for the recovery of immoveable property with or without rent or profits;
- (b) for the partition of immoveable property;
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immoveable property;
- (d) for the determination of any other right to or interest in immoveable property;
- (e) for compensation for wrong to immoveable property;
- (f) for the recovery of moveable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immoveable property held by or on behalf of the defendant may, where the relief sought can be entirely

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obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.—In this section "property" means property situate in British India.

[S. 19.]

17. Where a suit is to obtain relief respecting Suits for immoveable property, or compensation for property situate within wrong to, immoveable property situate within the jurisdiction of different Courts.

Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

[S. 16A.]

18. (1) Where it is alleged to be uncertain within the local limits of Place of institution of suit where local limits of jurisdiction of Courts are uncertain.

Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction:

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

(2) Where a statement has not been recorded under sub-section (1), and an objection is taken before an appellate or revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the appellate or revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto and there has been a consequent failure of justice.

[S. 18.]

19. Where a suit is for compensation for Suits for compensation for wrong done to the person or to moveable property, if the wrong was done within

the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

Illustrations.

(a) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.

(b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

20. Subject to the limitations aforesaid, [S. 17.] Other suits to be instituted where defendants reside or cause every suit shall be instituted in a Court within the local limits of whose jurisdiction arises—

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation I.—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

Explanation II.—A corporation shall be deemed to carry on business at its sole or principal office in British India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Illustrations.

(a) A is a tradesman in Calcutta. B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business.

(b) A resides at Simla, B at Calcutta and C at Delhi. A, B and C being together at Benares, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benares, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.

21. No objection as to the place of suing [16A (2).] Objections to jurisdiction shall be allowed by any appellate or revisional

Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

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[S. 22.]

22. Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed.

23. (1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court.

(2) Where such Courts are subordinate to different Appellate Courts but to the same High Court, the application shall be made to the said High Court.

(3) Where such Courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate.

24. (1) On the application of any of the parties and after notice transfer and withdrawal. hearing such of them as desire to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage—

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

- (i) try or dispose of the same; or
- (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or
- (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section, Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

25. (1) Where any party to a suit, appeal or other proceeding pending in a High Court presided over by a single Judge objects to its being heard by him and the Judge is satisfied that there are reasonable grounds for the objection, he shall make a report to the Governor General in Council, who may, by notification in the Gazette of India, transfer such suit, appeal or proceeding to any other High Court.

(2) The law applicable to any suit, appeal or proceeding so transferred shall be the law which the Court in which the suit, appeal or proceeding was originally instituted ought to have applied to such case.

INSTITUTION OF SUITS.

26. Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

[S. 48.]

SUMMONS AND DISCOVERY.

27. Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed.

[S. 64.]

28. (1) A summons may be sent for service in another province to such Court and in such manner as may be prescribed by rules in force in that province.

[S. 8.]

(2) The Court to which such summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue together with the record (if any) of its proceedings with regard thereto.

29. Summons issued by any Civil or Revenue Court situate beyond the limits of British India may be sent to the Courts in British India and served as if they had been issued by such Courts:

[S. 650A.]

Provided that the Courts issuing such summonses have been established or continued by the authority of the Governor General in Council, or that the Governor General in Council has, by notification in the Gazette of India, declared the provisions of this section to apply to such Courts.

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(Part I.—Suits in General.)

[New.]

30. Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,—

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;
- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;
- (c) order any fact to be proved by affidavit.

[New.]

31. The provisions in sections 27, 28 and 29 shall apply to summonses to give evidence or to produce documents or other material objects.

[New.]

32. The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may—

- (a) issue a warrant for his arrest;
- (b) attach and sell his property;
- (c) impose a fine upon him not exceeding five hundred rupees;
- (d) order him to furnish security for his appearance and in default commit him to the civil prison.

JUDGMENT AND DECREE.

[S. 198.]

33. The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow.

INTEREST.

[S. 209.]

34. (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

COSTS.

[S. 5, Judica-
ture Act,
1890.]

35. (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any

law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing. [S. 220.]

(3) The Court may give interest on costs at any rate not exceeding six per cent. per annum, and such interest shall be added to the costs and shall be recoverable as such. [S. 222.]

PART II.
EXECUTION.

GENERAL.

36. The provisions of this Code relating to the execution of decrees shall, so far as they are applicable, be deemed to apply to the execution of orders. [New.]

37. The expression "Court which passed a decree", or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,— [S. 649, expl.]

- (a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and
- (b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

COURTS BY WHICH DECREES MAY BE EXECUTED.

38. A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution. [S. 223.]

(1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court, [S. 223, second para.]

- (a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

- (b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and

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has property within the local limits of the jurisdiction of such other Court, or

- (c) if the decree directs the sale or delivery of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it, or
- (d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

[New.]

40. Where a decree is sent for execution in Transfer of decree to another province, it shall be sent to such Court and Court in another province. executed in such manner as may be prescribed by rules in force in that province.

[S. 223, fourth para.]

41. The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same the circumstances attending such failure.

[S. 228.]

42. The Court executing a decree sent to Powers of Court in executing transferred decree. it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

[S. 229.]

43. Any decree passed by a Civil Court established in any part of British India to which the provisions relating to execution do not extend, or by any Court established or continued by the authority of the Governor General in Council in the territories of any foreign Prince or State, may, if it cannot be executed within the jurisdiction of the Court by which it was passed, be executed in manner herein provided within the jurisdiction of any Court in British India.

[S. 229B.]

44. The Governor General in Council may, Execution of decrees passed by Courts of Gazette of India, declare native States. that the decrees of any Civil or Revenue Courts situate in the territories of any native Prince or State in alliance with His Majesty and not established or continued by the authority of the Governor General in Council, or any class of such decrees,

may be executed in British India as if they had been passed by the Courts of British India.

45. So much of the foregoing sections [S. 229A.] of this Part as empowers a Court to send a decree for execution to another Court shall be construed as empowering a Court in British India to send a decree for execution to any Court established or continued by the authority of the Governor General in Council in the territories of any foreign Prince or State to which the Governor General in Council has, by notification in the Gazette of India, declared this section to apply.

46. (1) Upon the application of the decree-holder [New.] Precepts. the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept.

(2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree:

Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.

QUESTIONS TO BE DETERMINED BY COURT EXECUTING DECREE.

47. (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) The Court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit or a suit as a proceeding and may, if necessary, order payment of any additional court-fees.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed, are parties to the suit.

LIMIT OF TIME FOR EXECUTION.

48. (1) Where an application to execute a [S. 230, Execution barred in certain cases.] decree not being a decree third and fourth paras.] granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh

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application presented after the expiration of twelve years from—

- (a) the date of the decree sought to be executed, or,
- (b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.
- (2) Nothing in this section shall be deemed—
 - (a) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application ; or
 - (b) to limit or otherwise affect the operation of article 180 of the second schedule to the Indian Limitation Act, 1877.

XV of 1877.

TRANSFEREES AND LEGAL REPRESENTATIVES.

[S. 233.] 49. Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

[S. 234.] 50. (1) Where a judgment-debtor dies before Legal representative. the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

PROCEDURE IN EXECUTION.

[New.] 51. Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—

- (a) by delivery of any property specifically decreed;
- (b) by attachment and sale or by sale without attachment of any property;

- (c) by arrest and detention in prison;
- (d) by appointing a receiver ; or
- (e) in such other manner as the nature of the relief granted may require.

52. (1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property. [S. 252.]

(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.

53. For the purposes of section 50 and section 52, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

54. Where the decree is for the partition of an undivided estate or of a share assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates.

ARREST AND DETENTION.

55. (1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the Local Government may appoint for the detention of persons ordered by the Courts of such district to be detained. [S. 335.]

Provided, firstly, that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise :

Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when

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the officer authorized to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found:

Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public, the officer authorized to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest:

Provided, fourthly, that, where the decree in execution of which a judgment-debtor is arrested, is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) The Local Government may, by notification in the local official Gazette, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the Local Government in this behalf.

(3) Where a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force.

(4) Where a judgment-debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Court, that he will within one month so apply, and that he will appear, when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the Court shall release him from arrest, and, if he fails so to apply and to appear, the Court may either direct the security to be realized or commit him to the civil prison in execution of the decree.

[S. 245A.]

56. Notwithstanding anything in this Part, Prohibition of arrest the Court shall not order or detention of women the arrest or detention in in execution of decree the civil prison of a woman for money. in execution of a decree for the payment of money.

57. The Local Government may fix scales, [S. 338.] Subsistence-allowance, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

58. (1) Every person detained in the civil [S. 342.] Detention and release. prison in execution of a decree shall be so detained,—

(a) where the decree is for the payment of a sum of money exceeding fifty rupees, for a period of six months, and,

(b) in any other case, for a period of six weeks:

Provided that he shall be released from such [S. 341.] detention before the expiration of the said period of six months or six weeks, as the case may be,—

(i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or

(ii) on the decree against him being otherwise fully satisfied, or

(iii) on the request of the person on whose application he has been so detained, or

(iv) on the omission by the person, on whose application he has been so detained, to pay subsistence-allowance:

Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii), without the order of the Court.

(2) A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison.

59. (1) At any time after a warrant for the [S. 653.] arrest of a judgment-debtor Release on ground of illness. has been issued the Court may cancel it on the ground of his serious illness.

(2) Where a judgment-debtor has been arrested, the Court may release him if, in its opinion, he is not in a fit state of health to be detained in the civil prison.

(3) Where a judgment-debtor has been committed to the civil prison, he may be released therefrom—

(a) by the Local Government, on the ground of the existence of any infectious or contagious disease, or

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(b) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness.

(4) A judgment-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that prescribed by section 58.

ATTACHMENT.

[S. 266.]

60. (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, banknotes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf :

Provided that the following particulars shall not be liable to such attachment or sale, namely :—

(a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman ;

(b) tools of artizans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section ;

(c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him ;

(d) books of account ;

(e) a mere right to sue for damages ;

(f) any right of personal service ;

(g) stipends and gratuities allowed to pensioners of the Government, or payable out of any service family pension fund notified in the Gazette of India by the Governor General in Council in this behalf, and political pensions ;

(h) allowances (being less than salary) of any public officer or of any servant of a railway company or local authority while absent from duty ;

(i) the salary or allowances equal to salary of any such public officer or servant as is referred to in clause (h), while on duty, to the extent of—

(i) the whole of the salary, where the salary does not exceed twenty rupees monthly ;

(ii) twenty rupees monthly, where the salary exceeds twenty rupees and does not exceed forty rupees monthly ; and

(iii) one moiety of the salary in any other case ;

(j) the pay and allowances of persons to whom the Indian Articles of War apply ;

(k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1897, for the time being applies in so far as IX of 1897, they are declared by the said Act not to be liable to attachment ;

(l) the wages of labourers and domestic servants whether payable in money or in kind ;

(m) an expectancy of succession by survivorship or other merely contingent or possible right or interest ;

(n) a right to future maintenance ;

(o) any allowance declared by any law passed under the Indian Councils Acts, 1861 and 1892, to be exempt from liability to attachment or sale in execution of a decree ; and,

(p) where the judgment-debtor is a person liable for the payment of land-revenue, any moveable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

Explanation.—The particulars mentioned in clauses (g), (h), (i), (j), (l) and (o) are exempt from attachment or sale whether before or after they are actually payable.

(2) Nothing in this section shall be deemed—

(a) to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately

V of 1869.

24 & 25
Vict., c. 67;
55 & 56

Vict., c. 14.

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44 & 45
Vic., c. 58.

appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land, or

(b) to affect the provisions of the Army Act or of any similar law for the time being in force.

61. The Local Government, with the previous sanction of the Governor General in Council, may, by general or special order published in the local official Gazette, declare that such portion of agricultural produce, or of any class of agricultural produce, as may appear to the Local Government to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgment-debtor and his family shall, in the case of all agriculturists or of any class of agriculturists, be *exempted* from liability to attachment or sale in execution of a decree.

[S. 271.] 62. (1) No person executing any process under this Code directing Seizure of property in dwelling-house. or authorizing seizure of moveable property shall enter any dwelling-house after sunset and before sunrise.

(2) *No outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the person executing any such process has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe any such property to be.*

(3) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to such woman that she is at liberty to withdraw; and, after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

[S. 285.] 63. (1) Where property not in the custody of any Court is under execution of decrees of several Courts.

Property attached in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

(2) Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees.

[S. 276.] 64. Where an attachment has been made, any private alienation of private transfer or delivery of property after attachment to be void. very of the property attached or of any interest there-in and any payment to the judgment-debtor of

any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

Explanation.—For the purposes of this section, claims enforceable under an attachment include claims for the rateable distribution of assets.

SALE.

65. Where immoveable property is sold in execution of a decree and such Purchaser's title. sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

66. (1) No suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

67. The Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, make rules for any local area imposing conditions in respect of the sale of any class of interests in land in execution of decrees for the payment of money, where such interests are so uncertain or undetermined as, in the opinion of the Local Government, to make it impossible to fix their value.

DELEGATION TO COLLECTOR OF POWER TO EXECUTE DECREES AGAINST IMMOVEABLE PROPERTY.

68. The Local Government may, with the previous sanction of the Governor General in Council, declare, by notification in the local official Gazette, that in any local area the execution of decrees in cases in which a Court has ordered any immoveable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immoveable property, shall be transferred to the Collector.

69. The provisions set forth in the Third Schedule shall apply to all cases in which the Schedule to apply. execution of a decree has been transferred under the last preceding section.

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[S. 320,
second and
third paras.]

70. (1) The Local Government may make rules consistent with the Rules of procedure. aforesaid provisions—

- (a) for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for retransmitting the decree from the Collector to the Court;
- (b) conferring upon the Collector or any gazetted subordinate of the Collector all or any of the powers which the Court might exercise in the execution of the decree if the execution thereof had not been transferred to the Collector;
- (c) providing for orders made by the Collector or any gazetted subordinate of the Collector, or orders made on appeal with respect to such orders, being subject to appeal to, and revision by, superior revenue-authorities as nearly as may be as the orders made by the Court, or orders made on appeal with respect to such orders, would be subject to appeal to, and revision by, appellate or revisional Courts under this Code or other law for the time being in force if the decree had not been transferred to the Collector.

[S. 320,
fourth para.] (2) A power conferred by rules made under jurisdiction of Civil sub-section (1) upon the Courts barred. Collector or any gazetted subordinate of the Collector, or upon any appellate or revisional authority, shall not be exercisable by the Court or by any Court in exercise of any appellate or revisional jurisdiction which it has with respect to decrees or orders of the Court.

[S. 320,
fifth para.] 71. In executing a decree transferred to the Collector deemed to be acting judicially. Collector under section 68 the Collector and his subordinates shall be deemed to be acting judicially.

[S. 326.] 72. (1) Where in any local area in which Where Court may authorize Collector to stay public sale of land. no declaration under section 68 is in force the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land or share, the Court may authorize the Collector to provide for such satisfaction in the manner recommended by him instead of proceeding to a sale of the land or share.

(2) In every such case the provisions of sections 69 to 71 and of any rules made in pursuance thereof shall apply so far as they are applicable.

DISTRIBUTION OF ASSETS.

[S. 295.] 73. (1) Where assets are held by a Court Proceeds of execu- and more persons than one tion-sale to be rateably distributed among de- have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of

money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons:

Provided as follows:—

(a) where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not be entitled to share in any surplus arising from such sale;

(b) where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold;

(c) where any immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale;

secondly, in discharging the amount due under the decree;

thirdly, in discharging the interest and principal monies due on subsequent incumbrances (if any); and,

fourthly, rateably among the holders of decrees for the payment of money against the judgment-debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

(3) Nothing in this section affects any right of the Government.

RESISTANCE TO EXECUTION.

74. Where the Court is satisfied that the [S. 330.] holder of a decree for Resistance to execu- the possession of immove- tion. able property or that the purchaser of immoveable property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or some person on his behalf and that such resistance or obstruction was without any just cause, the Court may, at the instance of the decree-holder or purchaser, order the judgment-debtor or such other person to be detained in the civil prison for a term which may extend to thirty days and may further direct that the decree-holder or purchaser be put into possession of the property.

*The Code of Civil Procedure Bill.**(Part III.—Incidental Proceedings.—Part IV.—Suits in Particular Cases.)***PART III.****INCIDENTAL PROCEEDINGS.****COMMISSIONS.**

[New.]

75. Subject to such conditions and limitations [Power of Court to issue commissions.] as may be prescribed, the Court may issue a commission—

- (a) to examine any person;
- (b) to make a local investigation;
- (c) to examine or adjust accounts; or
- (d) to make a partition.

[S. 386.]

76. (1) A commission for the examination of [Commission to any person may be issued other Court.] any person may be issued to any Court (not being a High Court) situate in a province other than the province in which the Court of issue is situate and having jurisdiction in the place in which the person to be examined resides.

(2) Every Court receiving a commission for the examination of any person under sub-section (1) shall examine him or cause him to be examined pursuant thereto, and the commission, when it has been duly executed, shall be returned together with the evidence taken under it to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order.

[New.]

77. In lieu of issuing a commission the Court [Letter of request.] may issue a letter of request to examine a witness residing at any place not within British India.

[S. 391.]

78. The provisions as to the execution and [Commissions issued by foreign Courts.] return of commissions for the examination of witnesses shall apply to commissions issued by—

- (a) Courts situate beyond the limits of British India and established or continued by the authority of His Majesty or of the Governor General in Council, or
- (b) Courts situate in any part of the British Empire other than British India, or
- (c) Courts of any foreign country for the time being in alliance with His Majesty.

PART IV.**SUITS IN PARTICULAR CASES.****SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY.**

[S. 416.]

79. (1) Suits by or against the Government [Suits by or against Government.] shall be instituted by or against the Secretary of State for India in Council.

(2) *Nothing in this section shall be deemed to limit or otherwise affect any information exhibited by the Advocate General in exercise of the power declared by section 111 of the East India Company Act, 1813.*

33 Geo. 3, c. 155.

80. No suit shall be instituted against the [S. 424.]

Secretary of State for India in Council, or against

a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been, in the case of the Secretary of State in Council, delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the district, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

81. In a suit instituted against a public officer [Ss. 425, 428.]

Exemption from arrest and personal porting to be done by him in his official capacity—

- (a) the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a decree, and,
- (b) where the Court is satisfied that the defendant cannot absent himself from his duty without detriment to the public service, it shall exempt him from appearing in person.

82. (1) Where the decree is against the [S. 429.]

Execution of decree. Secretary of State for India in Council or against a public officer in respect of any such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the Local Government.

(2) Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such report.

SUITS BY ALIENS AND BY OR AGAINST FOREIGN AND NATIVE RULERS.

83. (1) Alien enemies residing in British India with the permission [S. 430.] When aliens may sue. of the Governor General in Council, and alien friends, may sue in the Courts of British India, as if they were subjects of His Majesty.

(2) No alien enemy residing in British India without such permission, or residing in a foreign country, shall sue in any of such Courts.

Explanation.—Every person residing in a foreign country the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without a license in that behalf under the hand of one of His Majesty's Secretaries of State or of a Secretary to the Government of India, shall, for the purpose of sub-section (2), be deemed to be an alien enemy residing in a foreign country.

*The Code of Civil Procedure Bill.**(Part IV.—Suits in Particular Cases.—Part V.—Special Proceedings.)*

[S. 431.]

84. (1) A foreign State may sue in any Court of British India:
When foreign States may sue.

Provided that such State has been recognized by His Majesty or by the Governor General in Council.

Provided, also, that the object of the suit is to enforce a private right vested in the head of such State or in any officer of such State in his public capacity.

(2) Every Court shall take judicial notice of the fact that a foreign State has or has not been recognized by His Majesty or by the Governor General in Council.

[S. 432.]

85. (1) Persons specially appointed by order of the Government at the request of any Sovereign Prince or Ruling Chief, whether in subordinate alliance with the British

Government or otherwise, and whether residing within or without British India, or at the request of any person competent, in the opinion of the Government, to act on behalf of such Prince or Chief, to prosecute or defend any suit on his behalf, shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Prince or Chief.

(2) An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of the Prince or Chief.

(3) A person appointed under this section may authorize or appoint persons to make appearances and applications and do acts in any such suit or suits as if he were himself a party thereto.

[S. 433.]

86. (1) Any such Prince or Chief, and any Suits against Princes, ambassador or envoy of a Chiefs, ambassadors foreign State, may, with the consent of the Governor General in Council, certified by the signature of a Secretary to the Government of India, but not without such consent, be sued in any competent Court.

(2) Such consent may be given with respect to a specified suit or to several specified suits, or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the Prince, Chief, ambassador or envoy may be sued; but it shall not be given unless it appears to the Government that the Prince, Chief, ambassador or envoy—

- (a) has instituted a suit in the Court against the person desiring to sue him, or
- (b) by himself or another trades within the local limits of the jurisdiction of the Court, or
- (c) is in possession of immoveable property situate within those limits and is to be sued with reference to such property or for money charged thereon.

(3) No such Prince, Chief, ambassador or envoy shall be arrested under this Code, and, except with the consent of the Governor General in Council certified as aforesaid, no decree shall be executed against the property of any such Prince, Chief, ambassador or envoy.

(4) The Governor General in Council may, by notification in the Gazette of India, authorize a Local Government and any Secretary to that Government to exercise, with respect to any Prince, Chief, ambassador or envoy named in the notification, the functions assigned by the foregoing sub-sections to the Governor General in Council and a Secretary to the Government of India, respectively.

[S. 434.]

(5) A person may, as a tenant of immoveable property, sue, without such consent as is mentioned in this section, a Prince, Chief, ambassador or envoy from whom he holds or claims to hold the property.

87. A Sovereign Prince or Ruling Chief may sue, and shall be sued, in the name of his State:
Style of Princes and Chiefs as parties to the name of his State: suits.

Provided that in giving the consent referred to in the foregoing section the Governor General in Council or the Local Government, as the case may be, may direct that any such Prince or Chief shall be sued in the name of an agent or in any other name.

INTERPLEADER.

88. Where two or more persons claim adversely to one another the same debt, sum of money or other property, moveable or immoveable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made, and of obtaining indemnity for himself.

Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted.

PART V.

SPECIAL PROCEEDINGS.

ARBITRATION.

89. (1) Save in so far as is otherwise provided by the Indian Arbitration Act, 1899, or by any other law for the time being in force, all references to arbitration whether by an order in a suit or otherwise, and all proceedings thereunder, shall be governed by the provisions contained in the Second Schedule.

(2) The provisions of the Second Schedule shall not affect any arbitration pending at the commencement of this Code, but shall apply

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to any arbitration after that date under any agreement or reference made before the commencement of this Code.

SPECIAL CASE.

[S. 527.]

90. Where any persons agree in writing to state a case for the opinion of the Court, then the Court shall try and determine the same in the manner prescribed.

SUITS RELATING TO PUBLIC MATTERS.

[New.]

91. (1) In the case of a public nuisance the Advocate General, or two or more persons having obtained the consent in writing of the Advocate General, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

[S. 539.]

92. (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate General, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the Local Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree—

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (d) directing accounts and inquiries;
- (e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorizing the whole or any part of the trust-property to be let, sold, mortgaged or exchanged;
- (g) settling a scheme; or
- (h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

93. The powers conferred by sections 91 and 92 on the Advocate General may, outside the Presidency-towns, be, with the previous sanction of the Local Government,

exercised also by the Collector or by such officer as the Local Government may appoint in this behalf.

PART VI.**SUPPLEMENTAL PROCEEDINGS.**

94. In order to prevent the ends of justice [New.] Supplemental proceedings from being defeated the Court may, if it is so prescribed,—

- (a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;
- (b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;
- (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;
- (d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;
- (e) make such other interlocutory orders as may appear to the Court to be just and convenient.

95. (1) Where, in any suit in which an arrest [S. 491.] Compensation for obtaining arrest, attachment or injunction on insufficient grounds. or attachment has been effected or a temporary injunction granted under the last preceding section,—

- (a) it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds, or
- (b) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable ground for instituting the same,

the defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him:

Provided that a Court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction.

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.

[S. 539, last paragraph.]

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PART VII.**APPEALS.****APPEALS FROM ORIGINAL DECREES.**

[S. 540.]

96. (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed *ex parte*.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

[New.]

97. Where any party aggrieved by a preliminary decree where no appeal after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

[S. 575.]

98. (1) Where an appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed:

Provided that where the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal, including those who first heard it.

[S. 578.]

99. No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court.

APPEALS FROM APPELLATE DECREES.

[S. 584.]

100. (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the

High Court from every decree passed in appeal by any Court subordinate to a High Court, on any of the following grounds, namely:—

- (a) the decision being contrary to law or to some usage having the force of law;
- (b) the decision having failed to determine some material issue of law or usage having the force of law;
- (c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

(2) An appeal may lie under this section from an appellate decree passed *ex parte*.

101. No second appeal shall lie except on the other grounds. [S. 585.]

Second appeal on no grounds mentioned in section 100.

102. No second appeal shall lie in any suit of certain suits. [S. 586.]

No second appeal in the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees.

103. In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue of fact necessary for the disposal of the appeal but not determined by the lower appellate Court. [New.]

APPEALS FROM ORDERS.

104. (1) An appeal shall lie from the following orders, and save as [36 & 37] *Orders from which* [36 & 37] *appeals lie.* [36 & 37] *otherwise expressly provided in the body of this Code or by any law for the time being in force from no other orders:* [36 & 37]

- (a) an order superseding an arbitration where the award has not been completed within the period allowed by the Court;
- (b) an order on an award stated in the form of a special case;
- (c) an order modifying or correcting an award;
- (d) an order filing or refusing to file an agreement to refer to arbitration;
- (e) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration;
- (f) an order filing or refusing to file an award in an arbitration without the intervention of the Court;
- (g) an order under section 95;
- (h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree;
- (i) any order made under rules from which an appeal is expressly allowed by rules,

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(2) No appeal shall lie from any order passed in appeal under this section.

[S. 591.] 105. (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand made after the commencement of this Code from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

[S. 589.] 106. Where an appeal from any order is allowed, it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court.

GENERAL PROVISIONS RELATING TO APPEALS.

107. (1) *Subject to such conditions and limits as may be prescribed, an Appellate Court shall have power—*

- (a) to determine a case finally;
- (b) to remand a case;
- (c) to frame issues and refer them for trial;
- (d) to take additional evidence or to require such evidence to be taken.

[S. 582, 1st part.] (2) *Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.*

[S. 587, 590.] 108. The provisions of this Part relating to appeals from appellate decrees original decrees shall, and orders, so far as may be, apply to appeals—

- (a) from appellate decrees, and
- (b) from orders made under this Code or under any special or local law in which a different procedure is not provided.

APPEALS TO THE KING IN COUNCIL.

109. *Subject to such rules as may, from time to time, be made by His Majesty in Council regarding appeals from the Courts of British India, and to the provisions*

hereinafter contained, an appeal shall lie to His Majesty in Council—

(a) from any decree or final order passed on appeal by a High Court or by any other Court of final appellate jurisdiction;

(b) from any decree or final order passed by a High Court in the exercise of original civil jurisdiction; and

(c) from any decree or order, when the case as hereinabove provided, is certified to be a fit one for appeal to His Majesty in Council.

110. In each of the cases mentioned in [S. 596.]

Value of subject-matter. clauses (a) and (b) of section 109, the amount or value of the subject-matter of the

suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the subject-matter in dispute on appeal to His Majesty in Council must be the same sum or upwards,

or the decree or final order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value,

and where the decree or final order appealed from affirms the decision of the Court immediately below the Court passing such decree or final order, the appeal must involve some substantial question of law.

111. Notwithstanding anything contained in [S. 597.]

Bar of certain appeals. section 109, no appeal shall lie to His Majesty in Council—

(a) from the decree or order of one ^{24 & 25 Vict.} _{c. 104.} Judge of a High Court established under the Indian High Courts Act, 1861, or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, where such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the High Court at the time being; or

(b) from any decree from which under section 102 no second appeal lies.

Savings. 112. (1) Nothing contained in this Code shall be deemed—

(a) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or

(b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee.

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(2) Nothing herein contained applies to any matter of criminal or admiralty or vice-admiralty jurisdiction, or to appeals from orders and decrees of Prize Courts.

PART VIII. REFERENCE, REVIEW AND REVISION.

[S. 617.] **113.** Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit.

[S. 623.] **114.** Subject as aforesaid, any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed by this Code, or
- (c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

[S. 622.] **115.** The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit.

PART IX. SPECIAL PROVISIONS RELATING TO THE CHARTERED HIGH COURTS.

[S. 631.] **116.** This Part applies only to High Courts Part to apply only to which are or may hereafter certain High Courts. be established under the Indian High Courts Act, 1861.

[S. 632.] **117.** Save as provided in this Part or in Application of Code Part X or in rules, the to High Courts. provisions of this Code shall apply to such High Courts.

[S. 634.] **118.** Where any such High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction

should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the Court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs;

and, as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

119. Nothing in this Code shall be deemed to [S. 635.] unauthorized persons authorize any person on not to address Court behalf of another to address the Court in the exercise of its original civil jurisdiction, or to examine witnesses, except where the Court shall have in the exercise of the power conferred by its charter authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys.

120. (1) The following provisions shall not [S. 638.] apply to the High Court in the exercise of its original civil jurisdiction, namely, sections 16, 17 and 20.

(2) Nothing in this Code shall extend or [S. 639.] apply to any Judge of a High Court in the exercise of jurisdiction as an Insolvent Court.

PART X.

RULES.

121. The rules in the First Schedule shall [New.] have effect as if enacted in the body of this Code until annulled or altered in accordance with the provisions of this Part.

122. High Courts established under the Indian High Courts Act, 1861, and the Chief Courts of the Punjab and Lower Burma, may, from time to time after previous publication make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence, and may by such rules annul, alter or add to all or any of the rules in the First Schedule.

123. (1) A Committee, to be called the Rule Committee, shall be constituted at each of the towns of Calcutta, Madras, Bombay, Allahabad, Lahore and Rangoon.

(2) Each such Committee shall consist of the following persons, namely:—

(a) three Judges of the High Court established at the town at which such Committee is constituted, one of whom at least has served as a District Judge or (in the Punjab or Burma) a Divisional Judge for three years.

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- (b) a barrister practising in that Court,
- (c) an advocate (not being a barrister) or vakil or pleader *enrolled* in that Court,
- (d) a Subordinate Judge, and
- (e) in the towns of Calcutta, Madras and Bombay, an attorney.

(3) The members of each such Committee shall be appointed by the Chief Justice or Chief Judge, who shall also nominate one of their number to be president :

Provided that, if the Chief Justice or Chief Judge elects to be himself a member of a Committee, the number of other Judges appointed to be members shall be two, and the Chief Justice or Chief Judge shall be the President of the Committee.

(4) Each member of any such Committee shall hold office for such period as may be prescribed by the Chief Justice or Chief Judge in this behalf ; and whenever any member retires, resigns, dies or ceases to reside in the province in which the Committee was constituted, or becomes incapable of acting as a member of the Committee, the said Chief Justice or Chief Judge may appoint another person to be a member in his stead.

(5) There shall be a Secretary to each such Committee, who shall be appointed by the Chief Justice or Chief Judge and shall receive such remuneration as may be provided in this behalf by the Governor General in Council or by the Local Government, as the case may be.

124. Every Rule Committee shall make a Committee to report to the High Court established at the town at which it is constituted on any proposal to annul, alter or add to the rules in the First Schedule or to make new rules, and before making any rules under section 122 the High Court shall take such report into consideration.

125. High Courts, other than the Courts specified in section 122, may exercise the powers conferred by that section in such manner and subject to such conditions as the Governor General in Council may determine :

Provided that any such High Court may, after previous publication, *make a rule extending* within the local limits of its jurisdiction any rules which have been made under the provisions of this Part by any other High Court.

126. Rules made under the foregoing provisions shall be subject to the previous sanction of the following authorities, namely :—

- (a) if the rule is made by a High Court established under the Indian High Courts Act, 1861, to the sanction of the authority prescribed by section 15 of that Act for rules made under that section ;

- (b) if the rule is made by any other High Court, to the sanction of the Local Government.

127. Rules so made and sanctioned shall be [New.] published in the Gazette of India or in the local official Gazette, as the case may be, and shall *from the date of publication or from such other date as may be specified* have the same force and effect, within the local limits of the jurisdiction of the High Court which made them, as if they had been contained in the First Schedule.

128. (1) Such rules shall be not inconsistent with the provisions in the body of this Code, but, subject thereto, may provide for any matters relating to the procedure of Civil Courts.

(2) In particular, and without prejudice to the generality of the powers conferred by sub-section (1), such rules may provide for all or any of the following matters, namely :—

- (a) the service of summonses, notices and other processes by post or in any other manner either generally or in any specified areas, and the proof of such service ;
- (b) the maintenance and custody, while under attachment, of live-stock and other moveable property, the fees payable for such maintenance and custody, the sale of such live-stock and property and the proceeds of such sale ;
- (c) procedure in suits by way of counter-claim, and the valuation of such suits for the purposes of jurisdiction ;
- (d) procedure in garnishee and charging orders either in addition to, or in substitution for, the attachment and sale of debts ;
- (e) procedure where the defendant claims to be entitled to contribution or indemnity over against any person whether a party to the suit or not ;
- (f) summary procedure in suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising—
 - (i) on a contract express or implied ; or
 - (ii) on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty ; or
 - (iii) on a guarantee, where the claim against the principal is in respect of a debt or a liquidated demand only ; or
 - (iv) on a trust ; or

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- (v) in suits for the recovery of immovable property, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for non-payment of rent, or against persons claiming under such tenant;
- (g) procedure by way of originating summons;
- (h) consolidation of suits, appeals and other proceedings;
- (i) delegation to any Registrar, Prothonotary or Master or other official of the Court of any judicial, quasi-judicial and non-judicial duties; and
- (j) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of Civil Courts.

129. Notwithstanding anything in this Code, Power of Chartered any High Court established under the Indian High Courts to make rules as to their original civil procedure. such rules not inconsistent with the Letters Patent establishing it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code.

130. A High Court not established under the Indian High Courts Act, 1861, may, with the previous sanction of the Local Government, make, with respect to any matter other than procedure, any rule which any High Court so established might, under section 15 of that Act, make with respect to any such matter for any part of the territories under its jurisdiction which is not included within the limits of a Presidency-town.

131. Rules made in accordance with section 129 or section 130 shall be published in the Gazette of India or in the local official Gazette, as the case may be, and shall from the date of publication or from such other date as may be specified have the force of law.

PART XI.
MISCELLANEOUS.

132. (1) Women who, according to the customs and manners of the country, ought not to be compelled to appear in public shall be exempt from personal appearance in Court.

(2) Nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process in any case in which the arrest of women is not prohibited by this Code.

133. (1) The Local Government may, by notification in the local official Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption.

(2) The names and residences of the persons so exempted shall, from time to time, be forwarded to the High Court by the Local Government and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court.

(3) Where any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

134. The provisions of sections 55, 57 and 59 shall apply, so far as may be, to all persons arrested under this Code.

135. (1) No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his Court.

(2) Where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtars, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process other than process issued by such tribunal for contempt of Court while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

(3) Nothing in sub-section (2) shall enable a judgment-debtor to claim exemption from arrest under an order for immediate execution or where such judgment-debtor attends to show cause why he should not be committed to prison in execution of a decree.

136. (1) Where an application is made that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situate outside the local limits of the jurisdiction of the Court to which the application is made, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

(2) The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court

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subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment.

(3) The Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him.

(4) Where a person to be arrested or moveable property to be attached under this section is within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or at Bombay, or of the Chief Court of Lower Burma, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras, Bombay or Rangoon, as the case may be, and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court.

[S. 645.] 137. (1) The language which, on the commencement of this Code, is

Language of subordinate Courts. the language of any Court subordinate to a High Court shall continue to be the language of such subordinate Court until the Local Government otherwise directs.

(2) The Local Government may declare what shall be the language of any such Court and in what character applications to and proceedings in such Court shall be written.

(3) Where this Code requires or allows anything other than the recording of evidence to be done in writing in any such Court, such writing may be in English; but if any party or his pleader is unacquainted with English a translation into the language of the Court shall, at his request, be supplied to him; and the Court shall make such order as it thinks fit in respect of the payment of the costs of such translation.

[S. 185A.] 138. (1) The Local Government may, by power for Local Government to require evidence to be recorded in English, notification in the local official Gazette, direct with respect to any Judge specified in the notification, or falling under a description set forth therein, that evidence in cases in which an appeal is allowed shall be taken down by him in the English language and in manner prescribed.

(2) Where a Judge is prevented by any sufficient reason from complying with a direction under sub-section (1), he shall record the reason and cause the evidence to be taken down in writing from his dictation in open Court.

[S. 197.] Oath on affidavit by whom to be administered.

(a) any Court or Magistrate, or
(b) any officer or other person whom a High Court may appoint in this behalf, or

(c) any officer appointed by any other Court which the Local Government has generally or specially empowered in this behalf,

may administer the oath to the deponent.

140. (1) In any Admiralty or Vice-Admiralty [S. 645A.] Assessors in causes of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may, if it thinks fit, and shall upon request of either party to such cause, summon to its assistance, in such manner as it may direct or as may be prescribed, two competent assessors; and such assessors shall attend and assist accordingly.

(2) Every such assessor shall receive such fees for his attendance, to be paid by such of the parties as the Court may direct or as may be prescribed.

141. The procedure provided in this Code in Miscellaneous proceedings to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction. [S. 647.]

142. All orders and notices served on or given to any person under the Orders and notices to be in writing. provisions of this Code shall be in writing. [S. 94.]

143. Postage, where chargeable on a notice, summons, or letter issued under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed before the communication is made: [S. 95.]

Provided that the Local Government, with the previous sanction of the Governor General in Council, may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

144. (1) Where and in so far as a decree is varied or reversed, the Application for restitution. Court of first instance shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal. [S. 583.]

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

145. Where any person has become liable [S. 253.] Enforcement of liability as surety—

(a) for the performance of any decree or any part thereof, or

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(Part XI.—Miscellaneous.)

(b) for the restitution of any property taken in execution of a decree, or

(c) for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the Court in any suit or in any proceeding consequent theron,

the decree or order may be executed against him, to the extent to which he has rendered himself personally liable, in the manner herein provided for the execution of decrees, and such person shall, for the purposes of appeal, be deemed a party within the meaning of section 47:

Provided that such notice as the Court in each case thinks sufficient has been given to the surety.

[New.] 146. Save as otherwise provided by this Proceedings by or Code or by any law for the against representatives time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.

[New.] 147. In all suits to which any person under disability is a party Consent or agreement by persons under any consent or agreement as to any proceeding shall, if given or made with the express leave of the Court by the next friend or guardian for the suit, have the same force and effect as if such person were under no disability and had given such consent or made such agreement.

[New.] 148. Where any period is fixed or granted by the Court for the doing Enlargement of time. of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

[New.] 149. Where the whole or any part of any Power to make up deficiency of court-fees. fee prescribed for any deficiency of court-fees. by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

[New.] 150. Save as otherwise provided, where the Transfer of business. business of any Court is transferred to any other Court, the Court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code

upon the Court from which the business was so transferred.

151. Nothing in this Code shall be deemed [New] Saving of inherent to limit or otherwise affect powers of Court. the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court

152. Clerical or arithmetical mistakes in [O. 28, r. 11.] judgments, decrees or orders, decrees or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

153. The Court may at any time, and on such [O. 28, r. 12.] General power to terms as to costs or otherwise as it may think fit, amend any defect or error

in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

154. Nothing in this Code shall affect any [S. 3, third para.] present right of appeal which shall have accrued to any party at its commencement.

155. The enactments mentioned in the Fourth Schedule are hereby [New] Amendment of certain Acts. amended to the extent specified in the fourth column thereof.

156. The enactments mentioned in the Fifth Schedule are hereby [S. 3, first sentence.] repealed to the extent specified in the fourth column thereof.

157. Notifications published, declarations [S. 3, second sentence.] Continuance of and rules made, places appointed, agreements filed, framed, appointments made and powers conferred under Act VIII of 1859 or under any Code of Civil Procedure or any Act amending the same or under any other enactment hereby repealed shall, so far as they are consistent with this Code, have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under this Code and by the authority empowered thereby in such behalf.

158. In every enactment or notification [S. 3, second para.] Reference to Code passed or issued before the commencement of this Code and other repealed enactments. to or to any Chapter or section of Act VIII of 1859 or any Code of Civil Procedure or any Act amending the same or any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding Part, Order, section or rule.

The First Schedule.

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- [26.] 1. Who may be joined as plaintiffs.
- [New.] 2. Power of Court to order separate trials.
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- [26, 28.] 4. Court may give judgment for or against one or more of joint parties.
- [O. 16, r. 5.] 5. Defendant need not be interested in all the relief claimed.
- [29.] 6. Joinder of parties liable on same contract.
- [O. 16, r. 7.] 7. When plaintiff in doubt from whom redress is to be sought.
- [30, 32.] 8. One person may sue or defend on behalf of all in same interest.
- [31.] 9. Misjoinder and non-joinder.
- [27, 32.] 10. Suit in name of wrong plaintiff. Court may strike out or add parties. Where defendant added, plaint to be amended.
- [32.] 11. Conduct of suit.
- [35.] 12. Appearance of one of several plaintiffs or defendants for others.
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- [42.] 1. Frame of suit.
- [43.] 2. Suit to include the whole claim. Relinquishment of part of claim. Omission to sue for one of several reliefs.
- [45.] 3. Joinder of causes of action.
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- [36.] 1. Appearances, etc., may be in person, by recognized agent or by pleader.
- [37.] 2. Recognized agents.
- [38.] 3. Service of process on recognized agent.
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- [48.] 1. Suit to be commenced by plaintiff.
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- [64.] 1. Summons.
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- [67.] 4. No party to be ordered to appear in person unless resident within certain limits.

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- 5. Summons to be either to settle issues or for final disposal.
- 6. Fixing day for appearance of defendant.
- 7. Summons to order defendant to produce documents relied on by him.
- 8. On issue of summons for final disposal, defendant to be directed to produce his witnesses.

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- 9. Delivery or transmission of summons for service.
- 10. Mode of service.
- 11. Service on several defendants.
- 12. Service to be on defendant in person when practicable, or on his agent.
- 13. Service on agent by whom defendant carries on business.
- 14. Service on agent in charge in suits for immoveable property.
- 15. Where service may be on male member of defendant's family.
- 16. Person served to sign acknowledgment.
- 17. Procedure when defendant refuses to accept service, or cannot be found.
- 18. Endorsement of time and manner of service.
- 19. Examination of serving officer.
- 20. Substituted service. Effect of substituted service. Where service substituted, time for appearance to be fixed.
- 21. Service of summons where defendant resides within jurisdiction of another Court.
- 22. Service, within Presidency-towns and Rangoon, of summons issued by Courts outside.
- 23. Duty of Court to which summons is sent.
- 24. Service on defendant in prison.
- 25. Service where defendant resides out of British India and has no agent.
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- 27. Service on civil public officer or on servant of railway company or local authority.
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- 1. Pleading.
- 2. Pleading to state material facts and not evidence.
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- 10. Malice, knowledge, &c.
- 11. Notice.
- 12. Implied contract, or relation.
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- 14. Pleading to be signed.
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- 2. In money suits.
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[59.] 14. Production of document on which plaintiff sues.
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 [60.] 15. Statement in case of documents not in his possession or power.
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 65. Sales by whom conducted and how made.
 66. Proclamation of sales by public auction.
 67. Mode of making proclamation.
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*The Code of Civil Procedure Bill.**(The First Schedule.)**(Order I.—Parties to Suits. Order II.—Frame of Suit.)***The First Schedule.****ORDER I.***Parties to Suits.**(The marginal references are to Orders of the English Rules.)*

[S. 26; cf. O. 16, r. 1.]

1. All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise.

[New.]

2. Where it appears to the Court that any joinder of plaintiffs may embarrass or delay order separate trials. the trial of the suit, the Court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient.

[S. 28; cf. O. 16, r. 4.]

3. All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where if separate suits were brought against such persons any common question of law or fact would arise.

[Ss. 26, 28; cf. O. 16, rr. 1 and 4.] Court may give judgment for or against one or more of joint parties.

(a) for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to;

(b) against such one or more of the defendants as may be found to be liable, according to their respective liabilities.

[O. 16, r. 5.] 5. It shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against him.

[S. 29; cf. O. 16, r. 6.] 6. The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis and promissory notes.

[O. 16, r. 7.] 7. Where the plaintiff is in doubt as to the person from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties.

[Ss. 30, 32; cf. O. 16, r. 9.] 8. (1) Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested. But the Court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(2) Any person on whose behalf or for whose benefit a suit is instituted or defended under sub-rule (1) may apply to the Court to be made a party to such suit.

[S. 31; cf. O. 16, r. 11.] 9. No suit shall be defeated by reason of the misjoinder and non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

[S. 27; cf. O. 16, r. 2.] 10. (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court

may at any stage of the suit, if satisfied that the suit has been instituted through a *bond fide* mistake, and that it is necessary for the determination of the real matter in

dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) The Court may at any stage of the proceedings, [S. 32; cf. O. 15, r. 11.] either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where a defendant is added, the plaintiff shall, [S. 33; cf. O. 16, r. 11.] unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877, section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons. [S. 32.]

XV of 1877.

11. The Court may give the conduct of the suit to [S. 32; cf. O. 16, r. 39.] such person as it deems proper.

12. (1) Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding; and in like manner, where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding. [S. 33.]

(2) The authority shall be in writing signed by the party giving it and shall be filed in Court.

13. All objections on the ground of non-joinder or misjoinder of parties shall be taken at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived. [S. 34.]

ORDER II.*Frame of Suit.*

1. Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them. [S. 42.]

2. (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. [S. 43.]

(2) Where a plaintiff omits to sue in respect of, or Relinquishment of part of claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) A person entitled to more than one relief in respect of the same cause of action may sue for all or any of several remedies. such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation.—For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

The Code of Civil Procedure Bill.
(*The First Schedule.*)

*(Order II.—Frame of Suit. Order III.—Recognized Agents and Pleaders.
Order IV.—Institution of Suits.)*

Illustration.

A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907.

[S. 45; cf. O. 18, r. 1.]

3. Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.

[S. 44; cf. O. 18, r. 2.]

4. No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immovable property, except—

(a) claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof;

(b) claims for damages for breach of any contract under which the property or any part thereof is held; and

(c) claims in which the relief sought is based on the same cause of action:

Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property.

[S. 44; cf. O. 18, r. 5.]

5. No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him personally, unless the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

[C. Ss. 46, 47 & O. 18, r. 1.]

6. Where it appears to the Court that any causes of action joined in one suit cannot be conveniently tried or disposed of together, the Court may order separate trials or make such other order as may be expedient.

[S. 46.]

7. All objections on the ground of misjoinder of causes of action shall be taken at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

ORDER III.

Recognized Agents and Pleaders.

[S. 46.] 1. Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly

provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf:

Provided that any such appearance shall, if the Court so directs, be made by the party in person.

[S. 47.] 2. The recognized agents of parties by whom such appearances, applications and acts may be made or done are—

(a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

3. (1) Processes served on the recognized agent of a party shall be as effectual as Service of process on the party in person, unless the Court otherwise directs.

[S. 38.]

(2) The provisions for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

[S. 39.]

4. (1) The appointment of a pleader to make or do any appearance, application or act for any person shall be in writing, and shall be signed by such person or by his recognized agent or by some other person duly authorized by power-of-attorney to act in this behalf.

(2) Every such appointment, when accepted by a pleader, shall be filed in Court, and shall be considered to be in force until determined with the leave of the Court, by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies or until all proceedings in the suit are ended so far as regards the client.

(3) No advocate of any High Court established under the Indian High Courts Act, 1861, and no advocate of any other High Court who is a barrister shall be required to present any document empowering him to act.

24 & 25 Vict. c. 104.

5. Any process served on the pleader of any party or pleader.

Service of process on residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person.

[S. 40.]

6. (1) Besides the recognized agents described in rule Agent to accept service, any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

[S. 41.]

(2) Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument or, if the appointment is general, a certified copy thereof shall be filed in Court.

ORDER IV.

Institution of Suits.

1. (1) Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

[S. 45.]

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

2. The Court shall cause the particulars of Register of suits. every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted.

[S. 58.]

*The Code of Civil Procedure Bill.**(The First Schedule.)**(Order V.—Issue and Service of Summons.)*

ORDER V.

*Issue and Service of Summons.**Issue of Summons.*

S. 64.] 1. (1) When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified:

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear—

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

2. Every summons shall be accompanied by a

[S. 65.] Copy or statement annexed to summons. copy of the plaint or, if so permitted, by a concise statement.

3. (1) Where the Court sees reason to require the Court may order defendant or plaintiff to appear in person. personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

4. No party shall be ordered to appear in person to appear in person unless he resides—

unless resident within certain limits.

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate), less than two hundred miles distance from the court-house.

5. The Court shall determine, at the time of issuing Summons to be either the summons, whether it shall to settle issues or for final be for the settlement of issues disposal. only, or for the final disposal of the suit; and the summons shall contain a direction accordingly:

Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit.

6. The day for the appearance of the defendant Fixing day for appearance of defendant. shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

7. The summons to appear and answer shall order Summons to order the defendant to produce all defendant to produce documents in his possession or documents relied on by power upon which he intends to rely in support of his case.

8. Where the summons is for the final disposal of the suit, it shall also direct the defendant to produce, on the day fixed for his appearance, all witnesses upon whose evidence he intends to rely in support of his case.

Service of Summons.

9. (1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent to the proper officer to be served by him or one of his subordinates.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him by post or in such other manner as the Court may direct.

10. Service of the summons shall be made by delivery or transmission of summons for service.

11. Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.

12. Wherever it is practicable, service shall be made Service to be on defendant in person when practicable, or on his agent. on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

13. (1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer.

14. Where in a suit to obtain relief respecting, or Service on agent in charge in suits for immoveable property. compensation for wrong to immoveable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

15. Where in any suit the defendant cannot be found Where service may be on male member of defendant's family. and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him.

Explanation.—A servant is not a member of the family within the meaning of this rule.

16. Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to

[S. 70.]

[S. 71.]

[S. 72.]

[S. 73.]

[S. 74.]

[S. 75.]

[S. 76.]

[S. 77.]

[S. 78.]

[S. 79.]

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whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

[S. 80.]

17. Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or service, or cannot be where the serving officer, after found, using all due and reasonable diligence, cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

[S. 81.]

18. The serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

[S. 82.]

19. Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

[S. 82, second para.]

20. (1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

[S. 83.]

(2) Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

[S. 84.]

(3) Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

[S. 85.]

21. A summons may be sent by the Court by which it is issued, whether within or without the province, either by one of its officers or by post to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

[S. 86.]

22. Where a summons issued by any Court established Service, within Presidency-towns and Rangoon, of summons issued by Courts outside, beyond the limits of the towns of Calcutta, Madras, Bombay and Rangoon is to be served within any such limits, it shall be sent to the Court of Small Causes within whose jurisdiction it is to be served.

23. The Court to which a summons is sent under rule 21 or rule 22 shall, upon receipt thereof, proceed as if summons is sent. it had been issued by such Court and shall then return the summons to the Court of issue, together with the record (if any) of its proceedings with regard thereto.

24. Where the defendant is confined in a prison, the Service on defendant summons shall be delivered or sent by post or otherwise to the officer in charge of the prison for service on the defendant.

25. Where the defendant resides out of British India and has no agent in British India and has no agent. Service where defendant resides out of British India empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Court is situate.

Service in foreign territory through Political Agent or Court. 26. Where—

(a) in the exercise of any foreign jurisdiction vested in His Majesty or in the Governor General in Council, a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons issued by a Court under this Code in any foreign territory in which the defendant resides, or

(b) the Governor General in Council has, by notification in the Gazette of India, declared that any summons so issued may be served by any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid,

the summons may be sent to such Political Agent or Court, by post or otherwise, for the purpose of being served upon the defendant; and, if the Political Agent or Court returns the summons with an endorsement signed by such Political Agent or by the Judge or other officer of the Court that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

27. Where the defendant is a public officer (not belonging to His Majesty's military or naval forces or His Majesty's Indian Marine Service), or is the servant of

a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant.

28. Where the defendant is a soldier, the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

29. (1) Where a summons is delivered or sent to any person for service under rule 24, rule 27 or rule 28, such person shall be bound to serve it, if possible, and to return it under his signature, with the written acknowledgement of the defendant, and such signature shall be deemed to be evidence of service.

(2) Where from any cause service is impossible, the summons shall be returned to the Court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

30. (1) The Court may, notwithstanding anything hereinbefore contained, substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is, in the opinion of the Court, of a rank entitling him to such mark of consideration,

[S. 85.]

[S. 88.]

[S. 89.]

[S. 90.]

[S. 422.]

[S. 468.]

[S. 468.]

[S. 91.]

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(2) A letter substituted under sub-rule (1) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of sub-rule (3), shall be treated in all respects as a summons.

[S. 92.] (3) A letter so substituted may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; and, where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent.

ORDER VI.*Pleadings generally.*

[New.]

Pleading. 1. "Pleading" shall mean plaint or written statement.

[O. 19, r. 4.] 2. Every pleading shall contain, and contain only, a statement in a concise form of material facts and not the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums and numbers shall be expressed in figures.

[O. 19, r. 5.] 3. The forms in Appendix A when applicable, and Forms of pleading. where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings.

[O. 19, r. 6.] 4. In all cases in which the party pleading relies on Particulars to be given any misrepresentation, fraud, where necessary, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

[O. 19, r. 7.] 5. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just.

[O. 19, r. 14.] 6. Any condition precedent, the performance or occurrence of which is intended to be Condition precedent. contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

[O. 19, r. 16.] 7. No pleading shall, except by way of amendment, raise any new ground of claim Departure. or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

[O. 19, r. 20.] 8. Where a contract is alleged in any pleading, a bare Denial of contract. denial of the same by the opposite party shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract.

[O. 19, r. 21.] 9. Wherever the contents of any document are material, Effect of document to be stated. it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

[O. 19, r. 22.] 10. Wherever it is material to allege malice, fraudulent intention, knowledge or Malice, knowledge, etc. other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

11. Wherever it is material to allege notice to any [O. 19, r. 23] Notice. person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, are material.

12. Whenever any contract or any relation between [O. 19, r. 24] Implied contract, or any persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

13. Neither party need in any pleading allege any [O. 19, r. 25] Presumptions of law. matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied, (e.g., consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim).

14. Every pleading shall be signed by the party and his Pleading to be signed. pleader (if any): Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

15. (1) Save as otherwise provided by any law for the Verification of pleadings. time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

16. The Court may at any stage of the proceedings [O. 19, r. 27] Striking out pleadings. order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit.

17. The Court may at any stage of the proceedings [C. s. 53.] Amendment of pleadings. allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

18. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.

ORDER VII.*Plaint.*

Particulars to be contained in plaint. 1. The plaint shall contain the following particulars:—

(a) the name of the Court in which the suit is brought;

[S. 50.]

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- (b) the name, description and place of residence of the plaintiff;
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
- (e) the facts constituting the cause of action and when it arose;
- (f) the facts showing that the Court has jurisdiction;
- (g) the relief which the plaintiff claims;
- (h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and
- (i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits.

[S. 50.] 2. Where the plaintiff seeks the recovery of money in money suits, the plaintiff shall state the precise amount claimed:

But where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, the plaintiff shall state approximately the amount sued for.

[S. 50, para. 3.] 3. Where the subject-matter of the suit is immoveable property, the plaintiff shall state a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaintiff shall specify such boundaries or numbers.

[S. 50, para. 4.] 4. Where the plaintiff sues in a representative character, the plaintiff shall show not only that he has an actual existing interest in the subject-matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it.

[S. 50, para. 5.] 5. The plaintiff shall show that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

[S. 50, para. 6.] 6. Where the suit is instituted after the expiration of the period prescribed by the law from limitation, the plaintiff shall show the ground upon which exemption from such law is claimed.

[O. 20, r. 6.] 7. Every plaintiff shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

[O. 20, r. 7.] 8. Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate grounds, they shall be stated as far as may be.

[S. 58.] 9. (1) The plaintiff shall endorse on the plaint, or annex thereto, a list of the documents (if any) which he has produced along with it; and, if the plaintiff is admitted, shall present as many copies on plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief claimed

in the suit, in which case he shall present such statements.

(2) Where the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued.

(3) The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

(4) The chief ministerial officer of the Court shall sign such list and copies or statements if, on examination, he finds them to be correct.

10. (1) The plaintiff shall at any stage of the suit be [S. 57.] returned to be presented to the Court in which the suit should have been instituted.

(2) On returning a plaintiff the Judge shall endorse thereon the date of its presentation and return, the name of the plaintiff, the party presenting it, and a brief statement of the reasons for returning it.

11. The plaintiff shall be rejected in the following [Ss. 53, 54.] cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaintiff is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law.

12. Where a plaintiff is rejected the Judge shall record [S. 55.] an order to that effect with the reasons for such order.

13. The rejection of the plaint on any of the grounds [S. 56.] Where rejection of hereinbefore mentioned shall not plaintiff does not preclude of its own force preclude the presentation of fresh plaintiff from presenting a fresh plaint in respect of the same cause of action.

Documents relied on in plaint.

14. (1) Where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaintiff is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

(2) Where he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

15. Where any such document is not in the possession [S. 60.] or power of the plaintiff, he shall, if possible, state in whose possession or power it is.

16. Where the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may pass such decree as it would have passed if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

*The Code of Civil Procedure Bill.**(The First Schedule.)**(Order VII.—Plaint.—Order VIII.—Written Statement and Set-off.)*

[S. 62.] **17. (1)** Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891, where the document on which the plaintiff sues is an entry in a shop-book or other account in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies.

(2) The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed.

[S. 63.] **18. (1)** A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(2) Nothing in this rule applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory.

ORDER VIII.*Written Statement and Set-off.*

[S. 110.] **1. The defendant may, and, if so required by the Court** Written statement. **shall, at or before the first hearing** or within such time as the Court may permit, **present a written statement of his defence.**

[0. 19, r. 15.] **2. The defendant must raise by his pleading all matters** New facts must be which show the suit not to be specifically pleaded. maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence, as if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.

[0. 19, r. 17.] **3. It shall not be sufficient for a defendant in his** Denial to be specific. **written statement to deny generally the grounds alleged by the** plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

[0. 19, r. 19.] **4. Where a defendant denies an allegation of fact in** Evasive denial. **the plaint, he must not do so evasively, but answer the point of substance.** Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with divers circumstances, it shall not be sufficient to deny it along with those circumstances.

[0. 19, r. 19.] **5. Every allegation of fact in the plaint, if not denied** Specific denial. **specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability;**

[I of 1872, 33.] **Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.**

[S. 111.] **6. (1) Where in a suit for the recovery of money the defendant claims to set off Particulars of set-off to be given in written statement against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set off**

(2) The written statement shall have the same effect as Effect of set-off. a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off: but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

(3) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off.

Illustrations.

(a) A bequeaths Rs. 2,000 to B and appoints C his executor and residuary legatee. B dies and D takes out administration to B's effects. C pays Rs. 1,000 as surety for D; then D sues C for the legacy. C cannot set off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000.

(b) A dies intestate and in debt to B. C takes out administration to A's effects and B buys part of the effects from C. In a suit for the purchase-money by C against B, the latter cannot set off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.

(c) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods and is liable to him in compensation which he claims to set off. The amount not being ascertained cannot be set off.

(d) A sues B on a bill of exchange for Rs. 500. B holds a judgment against A for Rs. 1,000. The two claims being both definite pecuniary demands may be set off.

(e) A sues B for compensation on account of trespass. B holds a promissory note for Rs. 1,000 from A and claims to set off that amount against any sum that A may recover in the suit. B may do so, for, as soon as A recovers, both sums are definite pecuniary demands.

(f) A and B sue C for Rs. 1,000. C cannot set off a debt due to him by A alone.

(g) A sues B and C for Rs. 1,000. B cannot set off a debt due to him alone by A.

(h) A owes the partnership firm of B and C Rs. 1,000. B dies, leaving C surviving. A sues C for a debt of Rs. 1,500 due in his separate character. C may set off the debt of Rs. 1,000.

[O. 20, r. 7.] **7. Where the defendant relies upon several distinct Defence or set-off grounds of defence or set-off founded on separate founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly.**

8. Any ground of defence which has arisen after the New ground of defence, institution of the suit or the presentation of a written statement claiming a set-off may be raised by the defendant or plaintiff, as the case may be, in his written statement.

9. No pleading subsequent to the written statement of Subsequent pleadings. a defendant other than by way of defence to a set-off shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.

10. Where any party from whom a written statement Procedure when party is so required fails to present fails to present written the same within the time fixed statement called for by by the Court, the Court may Court. pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

[New.]

[S. 112.]

[S. 113.]

*The Code of Civil Procedure Bill.**(The First Schedule.)**(Order IX.—Appearance of Parties and Consequence of Non-appearance.)***ORDER IX.***Appearance of Parties and Consequence of Non-appearance.*

[S. 96.]

1. On the day fixed in the summons for the defendant Parties to appear on to appear and answer, the parties day fixed in summons shall be in attendance at the for defendant to appear Court-house in person or by and answer. their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court.

[S. 97.]

2. Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, the Court may make an order that the suit be dismissed.

Provided that no such order shall be made although the summons has not been served upon the defendant, if on the day fixed for him to appear and answer he attends in person or by agent when he is allowed to appear by agent.

[S. 98.]

3. Where neither party appears when the suit is called on for hearing, the Court Where neither party may make an order that the suit appears, suit to be dismissed.

[S. 99.]

4. Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an order to set the dismissal aside and if he satisfies the Court that there was sufficient cause for his not paying the court-fee and postal charges (if any) required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

[S. 99A.]

5. (1) Where, after a summons has been issued to the defendant, or to one of several defendants, and returned unreturned unserved, the plaintiff fails for a period of one year from the date of the return made to the Court by the officer ordinarily certifying to the Court returns made by the serving officers, to apply for the issue of a fresh summons and to satisfy the Court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that such defendant is avoiding service of process, the Court may make an order that the suit be dismissed as against such defendant.

(2) In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

[S. 100.]

6. (1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then—

(a) if it is proved that the summons was duly served, the Court may proceed When summons duly ex parte;

(b) if it is not proved that the summons was duly served, the Court When summons not shall direct a second summons to be issued

and served on the defendant;

(c) if it is proved that the summons was served on the defendant, but not When summons served, in sufficient time to

enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement.

7. Where the Court has adjourned the hearing of the suit *ex parte*, and the defendant appears on day of adjourned hearing and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

8. Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

9. (1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

10. Where there are more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, or make such order as it thinks fit.

11. Where there are more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the Court shall, at the time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

12. Where a plaintiff or defendant, who has been ordered to appear in person, does not appear in person, or shows sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing rules applicable to plaintiffs and defendants, respectively, who do not appear.

Setting aside Decrees ex parte.

13. In any case in which a decree is passed *ex parte* against a defendant, he may Setting aside decree apply to the Court by which the *ex parte* against defendant decree was passed for an order to set it aside; and if he satisfies

the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also.

14. No decree shall be set aside on any such application as aforesaid unless notice thereof has been served on the opposite party.

[S. 101.]

[S. 102.]

[S. 103.]

[S. 105.]

[S. 106.]

[S. 107.]

[S. 108.]

[S. 109.]

*The Code of Civil Procedure Bill.**(The First Schedule.)**(Order X.—Examination of Parties by the Court. Order XI.—Discovery and Inspection.)***ORDER X.***Examination of Parties by the Court.*

[S. 117.]

1. At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

[S. 118.]

2. At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the Court; and the Court may, if it thinks fit, put in the course of such examination questions suggested by either party.

[S. 119.]

3. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

[S. 120.]

4. (1) Where the pleader of any party who appears by a pleader or any such person accompanying a pleader as is referred to in rule 2, refuses or is unable to answer any material

question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

ORDER XI.*Discovery and Inspection.*

[O. 31, r. 1.]

1. In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties

or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

[O. 31, r. 2.]

2. On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court.

In deciding upon such application, the Court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the suit or for saving costs.

[O. 31, r. 3.]

3. In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court, either with or without an application for inquiry, that such interrogatories have been exhibited unreason-

ably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

4. Interrogatories shall be in Form No. 2 in Appendix [O. 31, r. 4.] Form of interrogatories. C, with such variations as circumstances may require.

5. Where any party to a suit is a corporation or a [O. 31, r. 5.] S. 124.] body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

6. Any objection to answering any interrogatory on [O. 31, r. 6.] Objections to interrogatories. the ground that it is scandalous S. 125.] or irrelevant or not exhibited *bond fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

7. Any interrogatories may be set aside on the ground [O. 31, r. 7.] Setting aside and striking out interrogatories. that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories.

8. Interrogatories shall be answered by affidavit to [O. 31, r. 8.] Affidavit in answer, be filed within ten days, or S. 126.] within such other time as the Court may allow.

9. An affidavit in answer to interrogatories shall be [O. 31, r. 9.] Form of affidavit in Form No. 3 in Appendix C, with such variations as circumstances may require.

10. No exceptions shall be taken to any affidavit in [O. 31, r. 10.] No exception to be taken, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court.

11. Where any person interrogated omits to answer, or answers insufficiently, the party [O. 31, r. 11.] Order to answer or interrogating may apply to the Court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by *viva voce* examination, as the Court may direct.

12. Any party may, without filing any affidavit, apply [O. 31, r. 12.] Application for discovery to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit: Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

13. The affidavit to be made by a party against whom [O. 31, r. 13.] Affidavit of documents, such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No. 5 in Appendix C, with such variations as circumstances may require.

The Code of Civil Procedure Bill.
(The First Schedule.)
(Order XI.—Discovery and Inspection.)

[O. 31, r. 14;
S. 130.]

14. It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

[O. 31, r. 15;
S. 131.]

15. Every party to a suit shall be entitled, at any time to give notice to any other party, in whose pleadings or affidavits referred to in reference is made to any documents, to produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.

[O. 31, r. 16.]

16. Notice to any party to produce any documents referred to in his pleading or Notice to produce. affidavits shall be in Form No. 7 in Appendix C, with such variations as circumstances may require.

[O. 31, r. 17;
S. 132.]

17. The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business, [at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in Form No. 8 in Appendix C, with such variations as circumstances may require.

[O. 31, r. 18;
S. 133.]

18. (1) Where the party served with notice under rule Order for inspection. 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit: Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

S. 134.]

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

19. (1) Where inspection of any business books is [O. 31, r. 19A.] applied for, the Court may, if Verified copies it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations: Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.

(2) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

(3) The Court may, on the application of any party to a suit at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power; and, if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them.

20. Where the party from whom discovery of any kind [O. 31, r. 20; Premature discovery. or inspection is sought objects to S. 135.] the same, or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

21. Where any party fails to comply with any order to [O. 31, r. 21; Non-compliance with answer interrogatories, or for S. 136.] discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made accordingly.

22. Any party may, at the trial of a suit, use in evidence any one or more of the [O. 31, r. 24.] Using answers to interrogatories at trial. answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer: Provided always that in such case the Court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, it may direct them to be put in.

23. This Order shall apply to minor plaintiffs, and defendants, and to the next [O. 31, r. 29.] Order to apply to minors. friends and guardians for the suit of persons under disability.

*The Code of Civil Procedure Bill.**(The First Schedule.)**(Order XII.—Admissions. Order XIII.—Production, Impounding and Return of Documents.)***ORDER XII.***Admissions.*

[O. 32, r. 1.] 1. Any party to a suit may give notice, by his Notice of admission of pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

[O. 32, r. 2; S. 128.] 2. Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the Court, a saving of expense.

[O. 32, r. 3.] 3. A notice to admit documents shall be in Form No. 9 in Appendix C, with such variations as circumstances may require.

[O. 32, r. 4.] 4. Any party may, by notice in writing, at any time Notice to admit facts. not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs: Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice: Provided also that the Court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

[O. 32, r. 5.] 5. A notice to admit facts shall be in Form No. 10 in Appendix C, and admissions Form of admissions. of facts shall be in Form No. 11 in Appendix C, with such variations as circumstances may require.

[O. 32, r. 6.] 6. Any party may at any stage of a suit, where Judgment on admissions. admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties: and the Court may upon such application make such order, or give such judgment, as the Court may think just.

[O. 32, r. 7.] 7. An affidavit of the pleader or his clerk, of the Affidavit of signature. due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof is required.

[O. 32, r. 8.] 8. Notice to produce documents shall be in Form No. 12 in Appendix C, with such Notice to produce documents. variations as circumstances may require. An affidavit of the pleader, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

[O. 32, r. 9.] 9. If a notice to admit or produce specifies documents Costs. which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

ORDER XIII.*Production, Impounding and Return of Documents.*

[Ss. 138, 140.] 1. (1) The parties or their pleaders shall produce, Documentary evidence at the first hearing of the suit, to be produced at first all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in

Court, and all documents which the Court has ordered to be produced.

(2) The Court shall receive the documents so produced: provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

2. No documentary evidence in the possession or Effect of non-production power of any party which should have been but has not been produced in accordance with the

requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof; and the Court receiving any such evidence shall record the reasons for so doing.

3. The Court may at any stage of the suit reject any Rejection of irrelevant document which it considers or inadmissible documents irrelevant or otherwise inadmissible, recording the grounds of such rejection.

4. (1) Subject to the provisions of the next following [S. 141.]

Endorsements on documents admitted in evidence. sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:—

(a) the number and title of the suit,
(b) the name of the person producing the document,
(c) the date on which it was produced, and
(d) a statement of its having been so admitted; and the endorsement shall be signed or initialled by the Judge.

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

5. (1) Save in so far as is otherwise provided by the Endorsements on copies Bankers' Books Evidence Act, of admitted entries in 1894, where a document admitted in evidence in the suit is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

(2) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished—

(a) where the record, book or account is produced on behalf of a party, then by that party, or
(b) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall, after causing the copy to be examined, compared and certified in manner mentioned in rule 17 of Order VII, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

6. Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of rule 4, sub-rule (1), together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge.

7. (1) Every document which has been admitted in evidence, or a copy thereof where Recording of admitted documents and return of rejected documents. a copy has been substituted for the original under rule 5, shall form part of the record of the suit.

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them.

[S. 139.]

[S. 140.]

[S. 141.]

XVIII of 1891.

[S. 142.]

[S. 142A.]

*The Code of Civil Procedure Bill.**(The First Schedule.)*

(Order XIII.—Production, Impounding and Return of Documents. Order XIV.—Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon.)

[S. 143.]

8. Notwithstanding anything contained in rule 5 or rule 7 of this Order or in rule 17 of Order VII, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

[S. 144.]

9. (1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same,—

(a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and

(b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of:

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor delivers to the proper officer a certified copy to be substituted for the original and undertakes to produce the original if required to do so:

Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless.

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.

[S. 147.]

10. (1) The Court may of its own motion, and Court may send for may in its discretion upon the papers from its own application of any of the parties records or from other to a suit, send for, either from Courts. its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

[S. 145.]

11. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

ORDER XIV.

Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon.

[S. 146.]

1. (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds: (a) issues of fact, (b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

2. Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

3. The Court may frame the issues from all or any Materials from which of the following materials:— issues may be framed.

- (a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;
- (b) allegations made in the pleadings or in answers to interrogatories delivered in the suit;
- (c) the contents of documents produced by either party.

4. Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before framing issues. before the Court or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

5. (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

6. Where the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may by agreement be stated in form of issues, may state the same in the form of an issue, and enter into an agreement in writing that, upon the finding of the Court in the affirmative or the negative of such issue,—

- (a) a sum of money specified in the agreement or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement;
- (b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or
- (c) one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

7. Where the Court is satisfied, after making such inquiry as it deems proper,—

- (a) that the agreement was duly executed by the parties,

*The Code of Civil Procedure Bill.**(The First Schedule.)*

Order XIV.—Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon.—Order XV.—Disposal of the Suit at the first hearing. Order XVI.—Summoning and Attendance of Witnesses.)

- (b) that they have a substantial interest in the decision of such question as aforesaid, and
- (c) that the same is fit to be tried and decided,

it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the Court;

and shall, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement; and, upon the judgment so pronounced, a decree shall follow.

ORDER XV.*Disposal of the Suit at the first hearing.*

[S. 152.] 1. Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

[S. 153.] 2. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants.

[S. 154.] 3. (1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.

(2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.

[S. 155.] 4. Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment, or may, if it thinks fit, after framing and recording issues, adjourn the suit for the production of such evidence as may be necessary for its decision upon such issues.

ORDER XVI.*Summoning and Attendance of Witnesses.*

[S. 159.] 1. At any time after the suit is instituted, the Summons to attend to parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.

[S. 160.] 2. (1) The party applying for a summons shall, before applying for summons, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

(2) In determining the amount payable under this rule, the Court may, in the case of Experts, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

- (3) Where the Court is subordinate to a High Court Scale of expenses. regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf.

3. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

[S. 161.] 4. (1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

[S. 162.] (2) Where it is necessary to detain the person summoned for a longer period than one day, Expenses of witnesses. the Court may, from time to time, order the party at whose instance he was summoned to pay into

Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of such party; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

[S. 163.] 5. Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

[S. 164.] 6. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

[S. 165.] 7. Any person present in Court may be required by Power to require persons present in Court to give evidence or to produce any document then and there in his possession or power.

[S. 166.] 8. Every summons under this Order shall be served Summons how served. as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V as to proof of service shall apply in the case of all summonses served under this rule.

[S. 167.] 9. Service shall in all cases be made a sufficient time Time for serving before the time specified in the summons. summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

[S. 168.] 10. (1) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, the Court shall, if the certificate of the serving-officer has not been verified by affidavit, and may, if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court, touching the service or non-service of the summons.

*The Code of Civil Procedure Bill.**(The First Schedule.)**(Order XVI.—Summoning and Attendance of Witnesses.—Order XVII.—Adjournments.)*

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12:

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property.

[S. 169.] 11. Where, at any time after the attachment of his property, such person appears drawn. If witness appears, attachment may be withdrawn and satisfies the Court,—

- (a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and,
- (b) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had no notice of such proclamation in time to attend,

the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

[S. 170.] 12. The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any:

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be released from attachment.

[New.] 13. The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this Order as if the person whose property is so attached were a judgment-debtor.

[S. 171.] 14. Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person other than a party to the suit, and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

[S. 172.] 15. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

[S. 173.] 16. (1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of.

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

17. The provisions of rules 10 to 13 shall, so far as [Ss. 174, first Application of rules 10 para, and 175.] to 13, are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.

18. Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.

19. No one shall be ordered to attend in person to give evidence unless he resides—

No witness to be ordered to attend in person unless resident within certain limits.

- (a) within the local limits of the Court's ordinary original jurisdiction, or
- (b) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the Court-house.

20. Where any party to a suit present in Court refuses, without lawful excuse, to give evidence or to produce any document when called on by Court, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

21. Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.

ORDER XVII.

Adjournments.

1. (1) The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

(2) In every such case the Court shall fix a day for the further hearing of the suit, and Costs of adjournment. may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded.

2. Where, on any day to which the hearing of the suit is adjourned, the parties or to appear on day fixed, any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

*The Code of Civil Procedure Bill.**(The First Schedule.)**(Order XVII.—Adjournments. Order XVIII.—Hearing of the Suit and Examination of Witnesses.)*

[S. 158.] **3.** Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.

[S. 159, exp[11].] **4.** The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

[S. 179.] **2. (1)** On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

[S. 180.] **(2)** The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

[S. 180.] **3.** Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

[S. 181.] **4.** The evidence of the witnesses in attendance shall be taken orally in open Court in the presence and under the personal direction and superintendence of the Judge.

[S. 182.] **5.** In cases in which an appeal is allowed the evidence of each witness shall be taken in writing, in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and the Judge shall, if necessary, correct the same, and shall sign it.

[S. 183.] **6.** Where the evidence is taken down in a language different from that in which it is given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it is given.

[S. 185A(3).] **7.** Evidence taken down under section 138 shall be in the form prescribed by rule 138, and shall be read over and signed and, as occasion may require, interpreted and corrected as if it were evidence taken down under that rule.

[S. 184.] **8.** Where the evidence is not taken down in writing Memorandum when by the Judge, he shall be bound, evidence not taken down as the examination of each witness proceeds, to make a memo-

randum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

[S. 185.] **9.** Where English is not the language of the Court, when evidence may be taken in English, who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down.

[S. 186.] **10.** The Court may, of its own motion or on the application of any party or his pleader, take down any particular question and answer, or any objection to any question, if there appears to be any special reason for so doing.

[S. 187.] **11.** Where any question put to a witness is objected to by a party or his pleader, and allowed by Court, the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

[S. 188.] **12.** The Court may record such remarks as it thinks Remarks on demeanour material respecting the demeanour of any witness while under examination.

[S. 189.] **13.** In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in cases, writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

[S. 190.] **14. (1)** Where the Judge is unable to make a memorandum as required by this Order, he shall cause the reason record reasons of his such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court.

(2) Every memorandum so made shall form part of the record.

[S. 191.] **15. (1)** Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum had been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it.

(2) The provisions of sub-rule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 24.

[S. 192.] **16. (1)** Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

(3) The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same,